Problems with *The Constitution of India:*

Commentaries, Critiques and Necessary Reforms

S M Nazmuz Sakib

DOI: 10.5281/zenodo.19635163

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Published by S M Nazmuz Sakib

This work is identified by its Digital Object Identifier (DOI): 10.5281/zenodo.19635163

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PART ONE: THE ARCHITECTURE OF INHERITED DOMINION

Foundations, Origins, Colonial DNA and the Structural Crisis of Indian Constitutionalism

PREFACE TO PART ONE

This textbook does not begin with praise. It begins with a question that has haunted every honest legal scholar, every disillusioned citizen, and every marginalized voice since the night of August 14, 1947, when the Republic of India was conceived in the womb of colonial midnight. The question is simple and brutal: did India truly become free on that night, or did it merely change the color of the hands holding the chains?

The Constitution of India, which came into force on January 26, 1950, is a document of extraordinary length, remarkable ambition, and deeply troubling inheritance. It is celebrated in every civics classroom as a triumph of human rights, as the charter of justice for a wounded civilization, as the document that turned a subject people into sovereign citizens. These celebrations are not entirely wrong. There are provisions of the Indian Constitution that represent genuine moral courage, genuine legal innovation, and genuine democratic aspiration. The fundamental rights chapter, the directive principles, the abolition of untouchability, the reservation framework, the secular character of the state, these are real achievements and they must be acknowledged with intellectual honesty.

But acknowledgment of achievement must not silence investigation of failure. And the failures of the Indian Constitution are not minor. They are structural. They are historic. They are ongoing. They are costing lives, dignity, freedom, and futures. The failures of this constitution reach into the courtrooms where the poor cannot afford justice, into the villages where the state still appears as the landlord, into the borders where a stunted foreign policy framework has made neighbors into permanent adversaries, into the police stations where colonial-era powers still authorize brutality, into the Parliament where a Prime Minister with a working majority can functionally govern as an elected monarch, and into the streets where the citizens are still, in a thousand different ways, subjects of a state they were promised to own.

This textbook is written in the spirit of what the great jurist Granville Austin once called "a working constitution" but with the critical understanding that a working constitution can still be a deeply unjust one. We will draw upon the traditions of critical legal studies, postcolonial jurisprudence, republican constitutional theory, Dworkinian interpretivism, Rawlsian distributive justice, Ambedkarite social constitutionalism, and the living constitutionalism debates of the twenty-first century to build a comprehensive argument: that the Constitution of India, in its current form and with its accumulated interpretive traditions, needs not merely amendment but fundamental reconstruction.

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The argument is made not in anger but in analysis. Not in nihilism but in the conviction that a people who have survived two thousand years of conquest, five hundred years of feudalism, and two hundred years of empire deserve a constitutional order that is genuinely their own, genuinely free, and genuinely just.

CHAPTER ONE: THE COLONIAL GENOME OF THE CONSTITUTION

1.1 The Government of India Act 1935 and Its Ghostly Continuity

To understand the Constitution of India, one must first understand what it was built from. The drafters of the Indian Constitution did not begin with a blank slate. They did not gather together the wisest minds of a liberated people and ask the foundational question of all constitutional theory: what kind of state do we wish to create, and what kind of human beings do we wish to be? They began, instead, with an existing document. They began with the Government of India Act, 1935.

The Government of India Act, 1935 was the last and most comprehensive constitutional instrument of British colonialism in India. It was a legislative monument to imperial administration. It created a federal structure of sorts, but a federal structure designed not to empower the Indian people but to manage them. It created legislative assemblies, but assemblies whose powers were carefully circumscribed so that the essential machinery of empire, the executive authority, the emergency powers, the financial controls, remained firmly in the hands of the Governor General and, through him, of the Crown. It was, in the language of constitutional theory, not a constitution at all. It was an administrative statute. It was the operating manual of a colonial enterprise.

And yet the framers of independent India took this document and used it as their primary template.

B.R. Ambedkar, the chairman of the Drafting Committee, acknowledged this candidly in the Constituent Assembly debates. He noted that many provisions of the new constitution were drawn "substantially" from the Act of 1935. What he was less candid about, and what legal historians have since documented exhaustively, is the degree to which the structural logic of the 1935 Act, not merely its textual provisions, was carried forward into the 1950 Constitution. The emergency powers in Part XVIII of the Constitution, the authority of the Centre over the states in matters of law and order, the discretionary executive powers vested in the President and the Governors, the breadth of preventive detention provisions, the structure of the federal financial relationship that places fiscal sovereignty substantially in the hands of the Union, these are not coincidental resemblances. They are deliberate inheritances.

Why did this happen? The historiography of the Constituent Assembly offers several explanations, and they deserve serious engagement.

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The first explanation is pragmatic. The framers, particularly Jawaharlal Nehru and Vallabhbhai Patel, believed that a new nation facing partition, communal violence, potential secessionism, and profound economic underdevelopment needed strong central authority to survive. The model of strong central authority that lay before them was the 1935 Act. They adapted it to democratic purposes but retained its centralizing architecture because they believed, genuinely, that without centralization India would fragment.

This argument has historical weight. The period 1947 to 1952 was one of existential national crisis. The integration of the princely states, the management of refugee flows, the negotiation of the Kashmir conflict, these were challenges of a magnitude that demanded effective central administration. Patel's integration of over five hundred princely states into the Indian Union was, whatever its methods, a political achievement of remarkable scale. The inherited administrative apparatus of the ICS (Indian Civil Service) and the centralizing framework of the Act of 1935, adapted to republican purposes, provided the tools for this achievement.

But the pragmatic defense of the colonial inheritance does not exhaust the question. The question is not merely whether the centralizing architecture was necessary in 1950. The question is whether it should have been temporary, whether constitutional mechanisms should have been built into the document to require its progressive dismantling as the new state stabilized, and whether the failure to build those mechanisms represents not a pragmatic choice but a failure of constitutional imagination.

The answer, examined with the benefit of seven decades of experience, is uncomfortable. The centralizing architecture was not temporary. It became permanent. It calcified. It was not used as an emergency mechanism to be surrendered when the emergency passed. It was used as the permanent operating system of the Indian state, and every government since independence, of every ideological persuasion, has found it convenient to retain and often to expand.

The second explanation for the colonial inheritance is institutional. The framers of the Indian Constitution were, almost without exception, educated in British constitutional tradition. They had studied in Inns of Court. They had practiced in courts whose procedural framework was entirely British. Their understanding of constitutional possibility was shaped by Westminster parliamentarism, by the doctrine of parliamentary sovereignty as modified for a republican context, by the structural assumptions of a unitary-state-disguised-as-federation that the British had used to govern their empire.

This institutional inheritance was not merely conscious borrowing. It was the unconscious horizon within which the framers thought. When Ambedkar spoke in the Constituent Assembly about the fundamental rights, he spoke in the language of English and American constitutional jurisprudence. When the framers debated federalism, they debated it in the conceptual vocabulary of the 1935 Act and of the report of the Simon Commission. Even those framers who were inspired by quite different traditions, those who drew on Gandhian communitarianism, on socialist economics, on indigenous ideas of self-governance, found their alternative visions reduced to a few clauses in the Directive Principles, a part of the Constitution that was explicitly made non-justiciable.

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This asymmetry is significant. The colonial administrative framework was built into the justiciable, binding, enforceable parts of the Constitution. The indigenous, anti-colonial, and transformative visions were put into the non-binding, aspirational, directive part. The British architecture was given legal force. The Indian imagination was given moral aspiration. This was not a neutral choice.

1.2 The Sixty Percent Provenance: A Constitutional Borrowing Analysis

A rigorous textual comparison between the Government of India Act, 1935 and the Constitution of India reveals a degree of borrowing that is, by any measure, extraordinary. Legal scholars such as Granville Austin, Shyam Divan, and more recently, Rohit De and Madhav Khosla have documented the scale of this borrowing in varying degrees of detail, and their findings are worth examining systematically.

The provisions of the Constitution relating to the Union executive, including the position of the President, the Council of Ministers, and the Prime Minister, are substantially modeled on the analogous provisions of the 1935 Act, with the adaptation of republican rather than monarchical forms. The President of India occupies a constitutional position that is structurally homologous to that of the Governor General under the 1935 Act: a constitutional head with extensive formal powers that are, in normal circumstances, exercised only on the advice of the Council of Ministers. The convention of cabinet government, the principle of collective responsibility, the mechanisms for the dissolution of Parliament, these are all transplantations from the Westminster model as operationalized in the 1935 Act.

The provisions relating to state governments and governors are even more directly borrowed. The position of the Governor of a state under the Indian Constitution is almost identical to the position of the Provincial Governor under the 1935 Act. In both cases, the governor is appointed by the central authority rather than elected by the people of the state. In both cases, the governor retains discretionary powers in specified circumstances. In both cases, the governor's discretionary powers can be used to destabilize elected state governments. The fact that under the 1935 Act this capacity served imperial control, while under the 1950 Constitution it has served central government control of states governed by opposition parties, represents a change in the beneficiary of the power rather than a change in its character.

The emergency provisions of the Constitution deserve particularly careful analysis. Articles 352 to 360, dealing respectively with national emergency, emergency in states (President's Rule), and financial emergency, are derived, with modifications, from Sections 93, 45, and 93 of the 1935 Act. Section 93 of the 1935 Act authorized the Governor to assume direct administration of a Province if the constitutional machinery of the Province had failed. This provision was intended to allow the colonial government to dismiss elected provincial governments if they were seen as threatening imperial interests, particularly during and after the period of provincial autonomy that followed the 1935 Act's partial implementation in 1937.

The Congress party governments that were dismissed under Section 93 in 1939, when Congress resigned its provincial offices in protest against India being declared a belligerent in World War Two without Indian consent, were dismissed using precisely this provision. And yet, Article 356

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of the Indian Constitution, which authorizes the President to dismiss a state government and impose central rule if "the Government of the State cannot be carried on in accordance with the provisions of this Constitution," replicates the essential logic of Section 93. The result has been that Article 356 has been used over 120 times in the history of independent India, frequently by central governments to dismiss state governments controlled by opposition parties. The colonial tool became a partisan tool, but it remained a tool of domination.

Preventive detention, perhaps the most viscerally colonial of all legal institutions, was carried forward into the Constitution through Article 22, which permits detention without trial for up to three months, and through the enabling legislation that Article 22 authorizes. The Government of India Act, 1935 had contained provisions for preventive detention under the Defense of India Rules. These provisions had been used extensively during the 1930s and 1940s to imprison leaders of the independence movement, including Nehru, Ambedkar, and Congress leaders at various points. And yet Article 22, which was debated with great controversy in the Constituent Assembly, retained the fundamental framework of detention without trial, with some procedural safeguards added.

The Constituent Assembly debate on preventive detention is one of the most illuminating moments in Indian constitutional history. T.T. Krishnamachari, arguing for the retention of preventive detention, said that the Government needed it to deal with "internal disturbances." K.M. Munshi argued that the rights of the state must be balanced against the rights of the individual. Opponents of the provision, including scholars such as Alladi Krishnaswami Ayyar, raised objections that proved prescient: that detention without trial was incompatible with the rule of law, that procedural safeguards were insufficient protection against executive abuse, that the history of preventive detention in India had been one of systematic misuse against legitimate political activity.

The opponents were overruled. The provision was retained. And the subsequent history of preventive detention in India has vindicated every concern that was raised: the National Security Act, the Public Safety Act, the Terrorist and Disruptive Activities (Prevention) Act, the Prevention of Terrorism Act, the Unlawful Activities (Prevention) Act, these are a succession of instruments, each building on the colonial foundations of Article 22, each used in significant measure against legitimate political opposition, against journalists, against activists, against tribal leaders, against labor organizers, against anyone whom the state found inconvenient.

1.3 The Architecture of Ambiguity: How the Constitution Creates and Conceals Power

One of the most sophisticated features of the Indian Constitution, and one of its most dangerous, is its structural ambiguity regarding the location of sovereign power. The Constitution presents itself as a republican, democratic, and federal document. Its Preamble speaks of "We, the People of India." Its fundamental rights chapter guarantees liberty, equality, and fraternity. Its Seventh Schedule distributes legislative powers between the Union and the states. Its provisions for elections and parliamentary government suggest the ultimate accountability of government to the governed.

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And yet beneath these democratic forms lies a subterranean architecture of concentrated executive power that is difficult to reconcile with genuine popular sovereignty. Understanding this architecture requires attention to several constitutional provisions that are rarely discussed in standard constitutional law courses but that, taken together, reveal a system designed for the concentration of power at the apex of the executive.

The first element of this architecture is the provisions relating to the President of India. Article 53 vests the executive power of the Union in the President. Article 74 provides that the President "shall" act on the advice of the Council of Ministers. On the surface, this looks like a standard Westminster arrangement: a ceremonial head of state acting on the advice of a cabinet responsible to Parliament. But the devil is in the details.

Article 74(2) provides that the question whether any, and if so what, advice was tendered by Ministers to the President shall not be inquired into in any court. This provision, inherited from the conventions of British cabinet government, means that the advice tendered by the Council of Ministers to the President is absolutely privileged from judicial review. The President acts on advice, but neither the advice nor the President's compliance with it can be examined by any court. This creates a zone of executive power that is structurally insulated from the rule of law.

Furthermore, the President retains, in at least some constitutional provisions, powers that are not subject to ministerial advice. The appointment and dismissal of Governors, conducted by the President on the advice of the Union Council of Ministers, is a power that has been used to place politically compliant individuals in Governor positions in states governed by opposition parties. The Governor, once in office, can use her or his discretionary powers to call elections, to dissolve state assemblies, to refuse to swear in incoming Chief Ministers, and to delay the summoning of assemblies in ways that serve the political interests of the party that appointed her or him.

These practices are not exceptional or aberrational. They are systematic. They represent the routine operation of a constitutional architecture that was designed not for genuine federalism but for central management of peripheral territories. The colonial Governor, appointed by the Crown and accountable to London, has been replaced by the constitutional Governor, appointed by the Centre and accountable to the ruling coalition at New Delhi. The form has changed. The function has not.

1.4 The Directive Principles and the Grammar of Deferral

The Directive Principles of State Policy, contained in Part IV of the Constitution, are among the most fascinating and most frustrating provisions of the document. They represent the transformative, social-democratic vision that animated many of the framers, particularly those influenced by socialist thought, by Fabian economics, and by the ideas of the Irish Constitution of 1937 from which they were substantially borrowed.

The Directive Principles include provisions requiring the state to secure for all citizens an adequate means of livelihood, to prevent concentration of wealth, to ensure equal pay for equal work, to protect the health of workers, to provide free and compulsory education, to promote

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cottage industries, to organize village panchayats, to secure a uniform civil code, to protect monuments and places of national importance, to separate the judiciary from the executive, and to promote international peace.

These are, taken together, a remarkably comprehensive program of social, economic, and political transformation. If the Directive Principles had been justiciable, if citizens had been able to go to court to enforce them, the constitutional history of India might have been radically different. The state would have been constitutionally required to address poverty, inequality, labor exploitation, and village governance in concrete, enforceable ways. The failure to do so would have been a constitutional violation, subject to judicial remedy.

But Article 37 of the Constitution explicitly provides that the Directive Principles "shall not be enforceable by any court." They are binding on the state "in the making of laws," but this binding character is entirely without remedy. No court can order the state to comply. No citizen can enforce a directive principle in a court of law. The transformative social program is constitutionally real but legally unenforceable.

This decision, to make the social and economic rights of citizens non-justiciable, while making the civil and political rights justiciable, reflects a choice that is not politically neutral. It reflects the preference of the propertied, educated elite that dominated the Constituent Assembly for a constitutional order that would protect their civil liberties (freedom of speech, freedom of religion, right to property, freedom of trade) while not subjecting them to legal compulsion to share their economic and social privilege with the majority.

The theoretical grounding for this distinction was provided by K.T. Shah and others who argued that political rights are "negative rights" requiring only that the state refrain from acting, while social and economic rights are "positive rights" requiring active state intervention, and that positive rights cannot be justiciable because the courts cannot manage the allocation of state resources. This argument, borrowed from the negative rights/positive rights distinction that was then dominant in Anglo-American constitutional theory, was not merely a practical argument about institutional competence. It was a political argument about the legitimacy of judicial enforcement of social transformation.

And it was, from the perspective of the majority of Indian citizens, the wrong argument. The experience of independent India has demonstrated that without justiciable social and economic rights, the political rights that are formally guaranteed become, for the majority of citizens, formal rather than substantive. The right to vote is meaningless to a citizen who is illiterate, malnourished, economically dependent on a landlord who dictates how she votes, and unable to access the legal system to enforce any of her other rights. The right to freedom of speech is meaningless to a citizen who cannot afford a lawyer or who lives in fear of the social consequences of speaking. The right to equality before the law is a cruel joke in a country where the average poor citizen cannot afford to file a case, cannot afford to pay a lawyer, and cannot afford to take time off work to attend hearings that may stretch over years or decades.

This is not abstract theory. This is the lived experience of the majority of Indian citizens.

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CHAPTER TWO: THE JURISPRUDENCE OF SOVEREIGN FRAGILITY

2.1 Constituent Power, the Basic Structure Doctrine, and the Paradox of Unamendability

The doctrine of the "basic structure" of the Constitution, established by the Supreme Court in Kesavananda Bharati v. State of Kerala in 1973, is one of the most celebrated and most debated contributions of Indian constitutional jurisprudence to the global conversation about constitutional theory. The doctrine holds that while Parliament has a wide power to amend the Constitution under Article 368, it cannot use that power to destroy or abrogate the "basic structure" of the Constitution. The identification of what counts as basic structure has been the subject of extensive judicial development since 1973, and the current understanding includes elements such as the supremacy of the Constitution, the republican and democratic form of government, the federal character of the Constitution, the secular character of the state, the separation of powers, judicial review, free and fair elections, and the rule of law.

The basic structure doctrine has been praised as a bulwark of constitutionalism against populist majoritarian excess. In the context of the Emergency declared by Indira Gandhi in 1975, when Parliament under duress amended the Constitution to subordinate fundamental rights to directive principles, to oust judicial review of the President's and Prime Minister's elections, and to extend its own life, the basic structure doctrine provided, at least in retrospect, a limiting principle against constitutional self-destruction.

But the doctrine also raises profound jurisprudential questions that its admirers often overlook.

The first question is one of democratic legitimacy. If the Constitution is the supreme law of the land, and if Parliament represents the sovereign will of the people, on what basis can the Supreme Court, an unelected body, declare that certain parts of the Constitution cannot be changed even by a constituent assembly majority? The basic structure doctrine is, from a positivist perspective, a remarkable instance of judicial self-empowerment. The Supreme Court has, in effect, declared itself the ultimate guardian not merely of the Constitution as it exists but of an ideal constitution that lies behind the text, a constitutional essence that only the judiciary can identify and protect.

H.M. Seervai, one of India's greatest constitutional scholars, was deeply critical of the basic structure doctrine precisely on these grounds. He argued that it represented an illegitimate usurpation of the constituent power by the judiciary, and that by claiming the authority to identify an unamendable basic structure, the Supreme Court had placed itself above the Constitution rather than under it. This critique has lost none of its force with time.

The second question is one of content. What belongs to the basic structure is determined by the Supreme Court, and the Court's determinations have not been entirely consistent or predictable. The inclusion of judicial appointments (as part of the independence of the judiciary) within the basic structure has been invoked to strike down the National Judicial Appointments Commission Act of 2014, an act that would have given elected officials a role in the appointment of Supreme

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Court judges. The striking down of this act in 2015 in Supreme Court Advocates-on-Record Association v. Union of India is defended by some as a protection of judicial independence and criticized by others as a protection of judicial self-interest, a collegium system that has demonstrated its own substantial problems with transparency, accountability, and representativeness.

The collegium system, under which senior Supreme Court judges appoint their own successors and the successors to High Court positions, is defended as a protection against political interference in judicial appointments. But its critics point out, with substantial evidence, that it has resulted in a judiciary that is deeply homogeneous in terms of social background, caste, regional origin, and gender, that it has been marked by opaque decision-making about appointments, that it has allowed personal and informal networks to play a decisive role in who becomes a judge, and that it has not prevented political considerations from entering into appointments through the back door of informal relationships between senior judges and political elites.

The third question raised by the basic structure doctrine is about its relationship to constitutional transformation. If certain elements of the Constitution cannot be changed, even by a supermajority acting through the amendment process, then the constitutional order is locked into the choices of the framers in ways that may prevent necessary adaptations to changing social reality.

Consider, for example, the question of the electoral system. India uses a first-past-the-post (FPTP) electoral system inherited from Britain, under which the candidate with the most votes in a constituency wins, regardless of whether she or he commands majority support. This system routinely produces majority governments in Parliament with minority support from the national electorate. The BJP won its 2019 parliamentary majority with approximately 37 percent of the popular vote. This means that 63 percent of Indian voters voted for parties other than the BJP, but those voters' preferences were translated into a substantial opposition minority in Parliament.

The problems with FPTP in a multi-party democracy are well-documented in comparative constitutional scholarship. They include the distortion of popular preferences, the underrepresentation of smaller parties, the overrepresentation of parties with geographically concentrated support, the systematic marginalization of voters who live in "safe" constituencies, and the perverse incentives it creates for communal and ethnic mobilization as a vote-gathering strategy.

Many democracies have addressed these problems through proportional representation systems or mixed systems that combine constituency-based representation with proportional allocation of seats. But changing India's electoral system would require constitutional amendment (since the electoral provisions are in the Constitution) and, arguably, any such change that altered the fundamental character of parliamentary elections might be challenged as affecting the "free and fair elections" element of the basic structure.

The basic structure doctrine, in other words, may function not as a protection of democracy but as a barrier to democratic reform.

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2.2 The Emergency and the Suspension of Constitutional Morality

The Emergency declared by Indira Gandhi on June 25, 1975 and maintained until March 1977 is the defining moment of Indian constitutional history from the perspective of constitutional failure. It was the moment when the gap between constitutional text and constitutional practice became undeniable, when the democratic forms of the Constitution were used to suspend the democratic substance, when an elected Prime Minister used the tools of constitutional government to establish, in effect, a temporary dictatorship.

The legal mechanism of the Emergency was Article 352, which allows the President to proclaim a state of emergency when the security of India or any part of its territory is threatened by war, external aggression, or "armed rebellion." The Emergency of 1975 was proclaimed on the ground of internal disturbance, a category that had been used since 1962 but that, in 1975, was invoked not because of any actual armed rebellion or internal disturbance of the kind Article 352 contemplated, but because the Allahabad High Court had found Indira Gandhi guilty of electoral malpractice and set aside her election to Parliament.

Faced with the prospect of losing her parliamentary seat and, consequently, the Prime Ministership, Gandhi chose to declare an emergency that suspended the fundamental rights of citizens, including the right to challenge detention, making it impossible for any court to examine the legal basis of any arrest made by the government. She then used the emergency powers to arrest opposition leaders, impose press censorship, suspend elections, and begin a program of forced sterilization under Sanjay Gandhi's population control initiative that resulted in thousands of coerced or non-consensual sterilizations, disproportionately targeting the poor and the Muslim population.

The Supreme Court's response to the Emergency is the most shameful chapter in the history of Indian constitutional adjudication. In A.D.M. Jabalpur v. Shivkant Shukla (1976), famously known as the Habeas Corpus case, the Supreme Court, by a majority of four to one, held that during the Emergency, no court could order the release of a person detained without trial, even if the detention was malicious, illegal, or in bad faith. The majority judgment effectively suspended the writ of habeas corpus, the foundation of every common law system's protection of personal liberty, on the ground that the proclamation of emergency had suspended the fundamental rights that justified the writ.

Justice H.R. Khanna, alone among the five judges, dissented. He held that even during a state of emergency, the executive could not detain persons without producing them before a court, that the writ of habeas corpus was not merely a statutory right grounded in fundamental rights but a common law right that survived the suspension of fundamental rights, and that the doctrine of the rule of law precluded the executive from depriving any person of life or liberty without legal authority that could be judicially examined.

Khanna's dissent was subsequently acknowledged as one of the most courageous judicial acts in Indian history. His judgment in that case is now cited as the true constitutional law on the matter. But the immediate consequence of his dissent was severe. Khanna, who was the senior most judge of the Supreme Court and should by convention have been appointed Chief Justice, was

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superseded by the government, which appointed a junior judge as Chief Justice. He resigned. The four majority judges, who had delivered a judgment that the Supreme Court itself subsequently repudiated in the Forty-Fourth Amendment and in subsequent judgments, received preferment and promotion.

The Emergency and its aftermath illuminates several structural problems of the Indian Constitution that remain unresolved.

First, Article 352 as it stood in 1975 was dangerously easy to invoke. The standard of "internal disturbance" was vague enough to encompass virtually any situation of political difficulty. The proclamation required the advice of the Cabinet, but the Cabinet under a dominant Prime Minister in a period of one-party government was not an independent check on executive power. The Parliament needed to approve the proclamation, but a Parliament under emergency conditions, with opposition leaders arrested and the press censored, was not an effective constraint. The courts, as the ADM Jabalpur case demonstrated, were prepared to defer to executive authority even at the cost of abandoning their core functions.

Second, the Emergency demonstrated the fragility of fundamental rights guarantees in the absence of institutional independence and civic culture. Rights that exist on paper but cannot be enforced by courts and are not defended by a culture of civil liberties are not real rights. They are promises that the powerful may choose to keep or break at their convenience.

Third, the Emergency demonstrated the danger of a constitutional order that concentrates the effective locus of power in the Prime Minister and Cabinet while maintaining the formal apparatus of democratic constitutionalism. When the same individual effectively controls the executive, commands a parliamentary majority, has appointed the relevant judicial personnel, and controls the information environment through censorship, the formal checks and balances of the constitutional order become nearly inoperable.

The Forty-Fourth Amendment of 1978, enacted after the fall of the Emergency government, corrected some of these problems. It tightened the conditions for the proclamation of a national emergency, requiring a Cabinet decision rather than merely Prime Ministerial advice, requiring the written request of the Union Cabinet, changing the standard from "internal disturbance" to "armed rebellion," and requiring Parliamentary approval by a two-thirds majority within one month. It also added Article 21A to protect the right to life and personal liberty from suspension even during emergency.

But the fundamental problem, the vulnerability of constitutional democracy to capture by a determined majoritarian force with command of the parliamentary majority and the executive, was not resolved by the Forty-Fourth Amendment. It was mitigated, not eliminated. And the subsequent decades have demonstrated that there are ways of undermining constitutional democracy that do not require the formal declaration of an emergency.

2.3 Constitutional Silences: What the Framers Chose Not to Say

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A constitution is defined as much by its silences as by its provisions. The things a constitution does not address, the institutions it does not establish, the rights it does not guarantee, the processes it does not require, these are as constitutive of the constitutional order as the explicit provisions.

The Constitution of India is remarkably silent on several matters that have proven to be of critical constitutional importance.

The first significant silence concerns political parties. The Constitution establishes an elaborate system of parliamentary democracy premised on the existence of political parties: the mechanism of a government supported by the confidence of the parliamentary majority, the system of a formal opposition, the concept of the Prime Minister as the leader of the majority party or coalition in Parliament. But the Constitution says almost nothing about political parties themselves. It does not define what a political party is. It does not establish any requirements for the internal democracy of political parties. It does not prescribe any process for the nomination of candidates. It does not require any transparency in the funding or financing of political parties.

This silence has had catastrophic consequences for the quality of Indian democracy. Without constitutional requirements of internal democracy, Indian political parties have become, with a few exceptions, family dynasties or strongman organizations. The Congress party was, for most of its history, functionally dominated by the Nehru-Gandhi family. Regional parties from the Dravida Munnetra Kazhagam to the Samajwadi Party to the Trinamool Congress are family enterprises. The Shiromani Akali Dal is a family dynasty. The Rashtriya Janata Dal is a family dynasty. The BJP, which presents itself as a party with internal democracy, is in practice controlled by the combination of the Rashtriya Swayamsevak Sangh organizational network and the personal authority of Narendra Modi.

Without constitutional requirements of transparency in party financing, Indian political parties have been funded by combinations of black money from business interests seeking policy favors, legal donations whose sources are not required to be disclosed, and, since the introduction of electoral bonds in 2018, an instrument that allowed anonymous large-scale donations to political parties in a way that critics argued was designed to benefit ruling parties with whom donor corporations had business relationships. The Supreme Court struck down the electoral bonds scheme in February 2024 in Association for Democratic Reforms v. Union of India, holding it unconstitutional, but the fundamental problem of constitutional silence on party finance remains.

The second significant silence concerns the accountability of legislators. The Constitution does not require legislators to maintain any regular contact with their constituencies between elections. It does not require them to account publicly for their voting record. It does not establish any mechanism for recalling legislators who have ceased to represent their constituents' interests. The Tenth Schedule of the Constitution, the anti-defection law added in 1985, does require legislators to vote with their party in Parliament and in state assemblies, but this requirement, far from enhancing accountability to citizens, actually reduces it by making legislators accountable to party leaders rather than to voters.

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The result is a system in which a Member of Parliament, once elected, has few formal legal obligations to the citizens who elected them. They must stand for re-election every five years, but they need not, between elections, do anything that is legally required. They need not attend Parliament (the absenteeism rate in Parliament is scandalously high), need not participate in debates, need not vote (the practice of voice votes for important legislation reduces the accountability of individual votes), and need not explain their conduct to their constituents.

The third silence concerns local self-government. The Constitution as originally enacted was remarkably unhelpful about local governance. It mentioned panchayats (village self-government bodies) in the Directive Principles but did not constitute them, did not give them defined powers or resources, and did not require the states to establish them. The result was that local self-government, which ought to be the foundation of a democratic order in a country where the majority of the population lived in villages, was left entirely to the discretion of state governments.

The 73rd and 74th Constitutional Amendments, enacted in 1992, partially rectified this silence by constitutionalizing panchayati raj and urban local bodies. These amendments are important achievements, and they have created constitutional obligations for states to hold elections to local bodies, to constitute finance commissions for the devolution of resources to local bodies, and to transfer specified functions to local bodies.

But even after these amendments, the effective functioning of local self-government in India remains deeply uneven. Many states transfer neither adequate funds nor adequate functions to local bodies. The elected bodies of local self-government frequently have neither the resources nor the administrative capacity to discharge their constitutional functions. Corruption at the local level is endemic and often structural, the result of underfunding of local bodies combined with their formal responsibility for services that citizens depend on, creating systematic incentives for informal payments.

2.4 The Question of Constituent Power: Who Speaks for "We, the People"?

The Preamble of the Indian Constitution begins with the words "We, the People of India." This formulation is borrowed from the American Constitution and is intended to convey the idea that the Constitution's authority derives from popular sovereign power, from the constitutive act of a people giving themselves a supreme law.

But the historical circumstances of the Constitution's framing make this claim of popular constituent power deeply problematic.

The Constituent Assembly that drafted the Constitution was not elected by universal suffrage. It was constituted on the basis of indirect election, in which the provincial legislative assemblies, themselves elected on a restricted franchise under the 1935 Act, chose delegates to the Constituent Assembly. This meant that the Constituent Assembly represented, at most, the educated, propertied, and politically active classes that had participated in elections under a restricted franchise. It did not represent the dalits, the adivasis, the rural poor, the women, the

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illiterate, the landless laboring poor who constituted the overwhelming majority of India's population in 1947.

Ambedkar was acutely conscious of this problem. He was himself an elected member of the Constituent Assembly from Bombay, elected on the basis of separate electorates for scheduled castes that were subsequently abolished. He knew that the Constituent Assembly was a body of limited representativeness and that the constitution it produced would be, in important respects, a constitution written by an elite for a people who had little effective participation in its making.

This is not merely a historical point. It has contemporary constitutional significance because the claim of popular constituent power is the basis on which the Constitution asserts its own authority. If that claim is historically questionable, then the Constitution's authority is itself open to challenge from a democratic perspective.

The question of constituent power has been raised again, in a different form, by proponents of a new constitution. Bibek Debroy, a member of the Prime Minister's Economic Advisory Council, argued in 2024 that India needs not amendments but a completely new constitution, drafted from first principles by a genuinely representative constituent assembly. Debroy's argument has drawn criticism from those who fear that the proposed new constitution would be an instrument of majoritarianism rather than genuine popular sovereignty, but the underlying constitutional question he raises is real and important: can a document drafted in 1950 by an indirectly elected assembly continue to claim the authority of popular constituent power more than seven decades later?

The question connects to a broader debate in constitutional theory between "constitutional originalism" (the view that the constitution's meaning is fixed by the understanding of those who framed it) and "living constitutionalism" (the view that constitutional provisions must be interpreted in light of evolving social values and circumstances). The Supreme Court of India has adopted a broadly living-constitutionalist approach to fundamental rights interpretation, expanding the content of rights like Article 21 (right to life and personal liberty) to include rights to livelihood, to dignity, to health, to education, to a clean environment, and to privacy. These expansions are defensible on living-constitutionalist grounds, but they also raise the question: if courts can significantly expand the content of constitutional rights through interpretation, who is actually governing? The constitutional text, as interpreted by an unelected judiciary, or the democratic will of the people expressed through elected legislatures?

This tension between judicial constitutionalism and democratic self-governance is not unique to India. It characterizes constitutional democracies globally. But in India it has a particular intensity because the gap between the constitutional text and social reality is so vast, because the judiciary has been forced to fill so many gaps left by legislative failure, and because the judiciary is itself so unrepresentative of the population whose rights it claims to protect.

CHAPTER THREE: FEDERALISM AS FICTION AND FACT

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3.1 The Union-State Relationship: A Structural Analysis

The Indian Constitution describes India as "a Union of States." This formulation was deliberately chosen in preference to "a Federation of States" or "a Federal Republic" to signal, as B.R. Ambedkar explained in the Constituent Assembly, that the Union was indestructible, that states could not secede, and that the Constitution contemplated the possibility of merger and reorganization of states by parliamentary action. The formulation also signaled, less explicitly, that the federal balance of the Constitution was designed to tilt heavily toward the Union in situations of conflict.

The Seventh Schedule of the Constitution distributes legislative powers between the Union and the states through three lists: the Union List (items over which only Parliament can legislate), the State List (items over which state legislatures can normally legislate), and the Concurrent List (items over which both Parliament and state legislatures can legislate, with parliamentary legislation prevailing in cases of conflict). A Count of the entries in these lists, and of the actual importance of the matters covered, reveals a striking imbalance: the Union List contains the most economically significant, fiscally lucrative, and strategically important subjects, including defense, foreign affairs, banking and finance, insurance, income tax, corporation tax, customs and excise, and the regulation of inter-state trade and commerce.

The State List includes subjects of great importance to citizens' daily lives: public order, police, local government, public health, agriculture, land, and education. But these are subjects whose effective exercise requires substantial financial resources, and the financial relationship between the Union and the states is heavily skewed toward the Union.

The system of fiscal federalism in India assigns the major revenue-generating taxes to the Union while assigning the most resource-intensive expenditure obligations to the states. Income tax, corporation tax, customs duties, and the Goods and Services Tax (GST) are predominantly Union revenues. The states are dependent on the Union for a share of these revenues, which is determined by the Finance Commission (a constitutional body appointed every five years to recommend the allocation of central taxes between the Union and states), supplemented by various centrally sponsored schemes that the Centre uses to direct state spending toward its priorities.

The result of this fiscal structure is that the states are financially dependent on the Centre even for the discharge of their own constitutional responsibilities. States that need to spend more on education, health, rural infrastructure, or social welfare are constrained by the availability of central transfers, which are, in turn, partly conditioned on state compliance with centrally determined policies and programs.

This fiscal dependence creates a structural subordination of state governments to the Centre that is inconsistent with genuine federalism. A federation, in the standard comparative constitutional understanding developed by scholars such as K.C. Wheare, requires that the federal and state units each have, within their sphere, a measure of genuine independence, including financial independence sufficient to discharge their functions. The Indian arrangement, which has been

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called "quasi-federal" by Ambedkar himself and by constitutional scholars from early on, does not satisfy this requirement.

The quasi-federal character of the Indian Constitution has been used systematically by central governments to override state autonomy in ways that, in a genuinely federal system, would be constitutionally impossible. The Centre's ability to impose national policies on states through centrally sponsored schemes, the Centre's control over major infrastructure decisions through central public sector enterprises, the Centre's ability to bypass state governments in disaster management, law enforcement, and electoral administration through central agencies like the NDMA, the CBI, and the Election Commission, these represent a de facto centralization of governance that goes beyond even the already centralized formal constitutional framework.

The BJP government since 2014 has been widely accused of accelerating this process of centralization in ways that undermine the effective autonomy of state governments, particularly those governed by opposition parties. The abrogation of Article 370, which reorganized the special constitutional status of Jammu and Kashmir and converted it from a state into two Union Territories, was accomplished by parliamentary legislation without the consent of the state legislature and, indeed, at a time when the state legislature was suspended and the state was under President's Rule. Whatever the policy merits or demerits of the decision, the process by which it was accomplished demonstrated that the Centre had the constitutional power to fundamentally restructure the position of a state without meaningful state participation.

3.2 Governors as Political Instruments: The Most Abused Constitutional Institution

If there is a single constitutional institution that exemplifies more clearly than any other the failure of the Indian Constitution to deliver on its own promises, it is the office of the Governor.

The Governor of an Indian state is appointed by the President of India, which in constitutional practice means by the Union Council of Ministers, which in political practice means by the Prime Minister and the ruling party at the Centre. The Governor holds office "during the pleasure of the President," which means that she or he can be removed at any time, without any stated reason, if the Central government chooses. There is no security of tenure. There is no requirement that the Governor be a resident of the state she or he governs. There is no constitutional requirement of any particular qualification. There is no parliamentary confirmation process.

The Governor occupies a constitutionally ambiguous position. She or he is formally the constitutional head of the state and acts in most matters on the advice of the elected State Cabinet. But the Governor retains certain discretionary powers: the power to summon, prorogue, and dissolve the state assembly, the power to appoint the Chief Minister, the power to refer state legislation to the President rather than granting assent, the power to reserve a Bill for the President's consideration rather than giving or withholding assent, and the power to submit reports to the President under Article 356 recommending the imposition of President's Rule on the ground that the constitutional machinery of the state has failed.

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These discretionary powers, in the hands of a Governor who is a political appointee of the Centre, have been used repeatedly to destabilize elected state governments of opposition parties. The history of gubernatorial misuse in India is long, systematic, and deeply damaging to democratic norms.

The most common form of misuse is delay in the invitation to form government. When a general election results in a fragmented assembly in which no party has a clear majority, the Governor has discretion in deciding which party leader to invite to form the government. This discretion has been exercised, in numerous documented instances, in ways that favor the party politically aligned with the appointing Central government.

In Goa in 2017, Governor Mridula Sinha invited the BJP to form the government despite the Congress having won the most seats in the assembly, on the ground that the BJP had "staked a claim" with sufficient supporting legislators. The invitation was given before the Congress could present its own claim, at a time when the Congress was engaged in assembling a majority. The decision was politically controversial and widely criticized, but it was constitutionally unchallenged because the courts have been reluctant to intervene in the exercise of gubernatorial discretion in the formation of government.

In Maharashtra in 2019, Governor Bhagat Singh Koshyari invited the BJP's Devendra Fadnavis to form the government at six in the morning, swearing him in as Chief Minister, before the Shiv Sena-NCP-Congress coalition that claimed majority support could prevent it. The Supreme Court subsequently ordered a floor test, which revealed that Fadnavis did not have majority support, and he resigned. But the episode demonstrated that a Governor willing to use constitutional powers in a politically motivated way could seriously disrupt democratic processes, and that even when the Supreme Court intervened to correct the immediate damage, the underlying constitutional problem was not resolved.

In Kerala, Tamil Nadu, and Telangana, Governors appointed by the Central government have delayed giving assent to Bills passed by state legislatures, prompting constitutional crises about the scope of gubernatorial power and duty. The Supreme Court, in a significant ruling in November 2023, held that Governors cannot indefinitely withhold assent to state Bills and must exercise their constitutional function within a reasonable time. But the very fact that the Supreme Court had to intervene at all to enforce basic constitutional duties is a symptom of the dysfunction of the institution.

The systematic misuse of the gubernatorial office raises a question that goes to the heart of Indian constitutional design: should an institution that has been used so consistently as a political instrument of the Centre against elected state governments continue to exist in its current form?

There are several reform options that constitutional scholars have proposed. The abolition of the Governor's office and its replacement by an elected state head, on the model of the United States, would eliminate the Centre's ability to use the office as a political tool. The alternative of requiring parliamentary confirmation for gubernatorial appointments, as in the American Senate confirmation system, would provide some accountability. The alternative of fixed, non-

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removable terms for Governors, with appointment by a committee independent of the government in power, would provide security of tenure.

But all of these reforms, however sensible in themselves, would require constitutional amendment, and constitutional amendment requires the support of Parliament, which means the support of the party that currently controls the Centre and that benefits most from the ability to use Governor appointments politically. This circular problem, where the institutions most in need of reform are controlled by those who benefit most from their current dysfunction, is a characteristic feature of the Indian constitutional predicament.

3.3 The Concurrent List and the Erosion of State Legislative Autonomy

The Concurrent List of the Seventh Schedule contains 52 entries covering subjects including criminal law and procedure, civil procedure, marriage and divorce, family law, education, forests, trade unions, and social security. Legislation by Parliament on any Concurrent List subject prevails over conflicting state legislation under Article 254. In practice, this has meant that Parliament's extensive use of the Concurrent List has substantially reduced the de facto legislative autonomy of state governments even in areas formally shared between the Union and the states.

More significantly, Parliament has used its power under Article 249 to legislate on State List subjects when the Rajya Sabha (the upper house) passes a resolution declaring it to be "expedient in the national interest" to do so. This provision, which has been used several times in Indian history, effectively allows the Centre to legislate on any subject that the Constitution assigns to the states, provided it can muster a majority in both houses of Parliament.

The cumulative effect of these provisions, together with the fiscal dependence of states on the Centre and the political use of the Governor's office, is to create a constitutional order that is federal in form but centralized in substance. The states have formal powers that are regularly constrained, overridden, or bypassed by the exercise of Union power. They have limited financial autonomy. They have formal legislative jurisdiction that is subject to easy central override. They have constitutional heads (the Governors) who are political instruments of the Centre.

This is not what genuine federalism looks like. And it has consequences not only for the distribution of power between the Centre and the states but for the quality of governance that citizens receive, for the accountability of governments to the governed, and for the capacity of the political system to accommodate the enormous diversity of India's regions, languages, cultures, economies, and social formations.

CHAPTER FOUR: FUNDAMENTAL RIGHTS AND THE ARCHITECTURE OF INEQUALITY

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4.1 Rights on Paper, Privileges in Practice: The Class Character of Fundamental Rights Enforcement

The fundamental rights guaranteed by Part III of the Indian Constitution are, in their textual formulation, among the most comprehensive guarantees of civil and political liberty in any constitution in the world. The right to equality before the law, the prohibition of discrimination on grounds of religion, race, caste, sex, or place of birth, the protection of six specific freedoms including speech, assembly, movement, and the right to practice any profession, the right against exploitation including the prohibition of forced labor and child labor, the right to freedom of conscience and religion, cultural and educational rights for minorities, the right to constitutional remedies, these together constitute a framework that would, if genuinely and equally enforced, represent a remarkable guarantee of individual liberty and social equality.

But the enforcement of fundamental rights in India is not equal. It is deeply, structurally, systematically unequal in ways that reflect and reinforce the broader inequalities of Indian society.

The primary mechanism for the enforcement of fundamental rights is constitutional litigation: Article 32 grants the Supreme Court the power to issue writs for the enforcement of fundamental rights, and Article 226 grants the same power to High Courts. These writ jurisdictions are original, meaning that cases can be brought directly without going through lower courts. This is, in principle, a valuable mechanism for rapid constitutional justice.

But constitutional litigation is expensive. Filing a writ petition in the Supreme Court requires the engagement of an advocate-on-record, a senior advocate for complex cases, court fees, and the capacity to withstand the delay that characterizes Indian judicial proceedings. The average cost of bringing a fundamental rights case to the Supreme Court is beyond the means of the vast majority of Indian citizens. Legal aid is constitutionally mandated under Article 39A (a Directive Principle inserted by the Forty-Second Amendment) and under the Legal Services Authorities Act, 1987, but the quality, reach, and effectiveness of publicly funded legal assistance in India remains deeply inadequate.

The result is that the Supreme Court of India is, in its fundamental rights writ jurisdiction, primarily accessible to the educated, the propertied, and the well-connected. The cases that reach the Supreme Court on fundamental rights grounds are predominantly brought by middle-class and elite litigants, by organized civil society groups, by corporations challenging regulatory restrictions, and by state governments. The poor, the illiterate, the landless, the adivasi, the dalit, the urban informal worker, these are the people whose fundamental rights are most frequently and most systematically violated, and they are the people who can least effectively access the constitutional machinery established to protect their rights.

This is not merely a consequence of poverty. It is a consequence of constitutional design choices that prioritize formal access over substantive access. A constitutional order genuinely committed to equal protection of fundamental rights would have designed its enforcement mechanisms differently. It would have made constitutional litigation free and accessible to all. It would have established a network of constitutional courts at the district level, not merely at the High Court

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and Supreme Court levels. It would have reversed the burden of proof in certain categories of fundamental rights cases involving the exercise of state power. It would have created specialized tribunals for certain categories of rights violations, such as police brutality, custodial torture, and forced displacement.

These design choices were not made, because they were not in the interests of the drafters of the Constitution, who were overwhelmingly from social backgrounds that gave them relatively good access to the legal system even as it was.

4.2 The Right to Property and Its Abolition: A Constitutional Civil War

The story of the right to property in the Indian Constitution is one of the most dramatic in Indian constitutional history, and it illuminates with particular clarity the class interests that have shaped the evolution of constitutional law.

As originally enacted, Article 19(1)(f) of the Constitution guaranteed the right of every citizen "to acquire, hold and dispose of property," and Article 31 provided protection against the compulsory acquisition of property except by authority of law and on payment of compensation. These provisions were intended by the Congress-dominated Constituent Assembly to protect the propertied classes against socialist experiments in nationalization and land reform.

But the Congress government itself, committed at least rhetorically to land reform and the abolition of zamindari (landlord) systems that had concentrated agricultural land in the hands of a few, found itself immediately in conflict with these constitutional protections. State governments that enacted land reform legislation, abolishing zamindari and redistributing land to peasants, found their legislation challenged in courts by zamindars claiming that the compensation provided was inadequate and that their fundamental right to property had been violated.

The constitutional conflict came to a head in A.K. Gopalan v. State of Madras (1950), Romesh Thappar v. State of Madras (1950), and State of Bihar v. Maharajadhiraj Sir Kameshwar Singh (1951), in which the Patna High Court struck down the Bihar Land Reforms Act on the ground that it violated the right to property. The Congress government's response was to enact the First Constitutional Amendment in 1951, inserting the Ninth Schedule and providing that laws placed in the Ninth Schedule would be immune from fundamental rights challenge.

This was the beginning of a constitutional civil war between the legislature and the judiciary over the right to property that lasted for more than two decades. The First, Fourth, Seventeenth, Twenty-Fifth, and Forty-Second Amendments all dealt in various ways with the relationship between the right to property and the state's power to redistribute. The Kesavananda Bharati case in 1973, in addition to establishing the basic structure doctrine, also addressed the property rights issue in the context of the twenty-fifth amendment.

The end of this constitutional war came with the Forty-Fourth Amendment in 1978, which deleted the right to property from the list of fundamental rights and reduced it to a mere constitutional right under Article 300A. Property could no longer be compulsorily acquired

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without authority of law, but compensation was no longer a constitutional requirement in the strong sense that the Supreme Court had imposed through its earlier interpretations.

This shift was welcomed by the Left as a constitutional endorsement of redistributive politics. But its consequences have been more complex. The removal of strong constitutional property rights protection, without the creation of genuinely redistributive institutions in their place, has in practice removed protections that the poor need against arbitrary state acquisition as much as the rich do. Slum dwellers who are evicted from the land they have occupied, adivasis who are displaced from forests for mining or infrastructure projects, peasants whose land is acquired for industrial estates, these citizens have fewer constitutional protections than they would have had under the original right to property.

The state's power of eminent domain, the power to compulsorily acquire private land for public purposes, is an inherent power of every sovereign. The question is not whether it should exist but how it should be regulated. The constitutional history of India's right to property suggests that the regulation of this power through fundamental rights is inherently contested and that the form of regulation reflects the balance of political power rather than any neutral principle of justice.

4.3 Article 21 and the Expanding Universe of the Right to Life

In contrast to the truncated history of the right to property, the history of the right to life and personal liberty under Article 21 represents one of the most creative developments in Indian constitutional jurisprudence. Through a series of landmark cases stretching from Maneka Gandhi v. Union of India (1978) through the Privacy case (K.S. Puttaswamy v. Union of India, 2017), the Supreme Court has progressively expanded the content of Article 21 to include a remarkable range of rights and entitlements.

Article 21, in its original text, provides that "no person shall be deprived of his life or personal liberty except according to procedure established by law." This is a provision concerned primarily with procedural protection against state power: the state may deprive a person of life or liberty, but only through a legally established procedure.

In the early constitutional history, the Supreme Court interpreted this provision narrowly, holding in A.K. Gopalan that Article 21 was satisfied if the procedure for deprivation was prescribed by law, regardless of the fairness of that procedure. This interpretation allowed the continued use of preventive detention as long as it was authorized by legislation, even if the legislation provided minimal procedural safeguards.

Maneka Gandhi v. Union of India transformed this understanding. The Supreme Court held that "procedure established by law" within Article 21 means not merely any procedure that is prescribed by law, but a procedure that is "fair, just, and reasonable" by constitutional standards. The Court also held that the rights guaranteed in Part III of the Constitution are not isolated provisions but form an integrated whole, and that restrictions on any one right must be measured against the combined guarantees of all the others.

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From this beginning, the expansion of Article 21 proceeded rapidly over the following decades. The right to life has been held to include: the right to livelihood, the right to health, the right to medical treatment, the right to education, the right to shelter, the right to a clean environment, the right to privacy, the right to dignity, the right to legal aid, the right against inhuman treatment, the right to speedy trial, the right to information, and many others.

This expansive reading of Article 21 has been celebrated as evidence of the dynamism of Indian constitutional law and of the Supreme Court's willingness to use constitutional interpretation to advance social justice. But it also raises several concerns that deserve serious analysis.

First, the expansion of Article 21 through judicial interpretation has, in effect, converted non-justiciable directive principles into justiciable fundamental rights by reading them into Article 21. The right to education, for example, was a directive principle under Article 45 before it was constitutionalized as a fundamental right by the Eighty-Sixth Amendment in 2002. But even before that amendment, the Supreme Court had held that the right to free primary education was implicit in the right to life under Article 21. This judicial constitutionalization of directive principles is applauded by progressive scholars but criticized by more restrained ones as an overreach of judicial power that converts aspirational policy commitments into legally enforceable rights without democratic deliberation about the content and scope of those rights.

Second, the expanding content of Article 21 has not been accompanied by a corresponding expansion of the state's institutional capacity and political will to deliver on these rights. The Supreme Court can hold that the right to health is a fundamental right under Article 21, but it cannot build hospitals, train doctors, ensure the supply of medicines, or reorganize the public health system. Rights that are declared without the institutions to enforce them are, for many citizens, words on paper.

Third, the expansion of rights through judicial interpretation has been unevenly distributed. The right to privacy, recognized in the Puttaswamy case in 2017, benefits primarily those whose privacy is violated by the state in ways that reach the Supreme Court: educated, urban, digitally active citizens. The right to shelter has rarely been effective for the urban poor who face eviction, because the courts have developed doctrines that allow slum demolitions to proceed even when they displace people from their only homes, by conditioning the right to shelter on the "legality" of occupation in ways that are deeply hostile to the realities of informal urban settlement.

4.4 Reservations, Social Justice, and the Unfinished Revolution

The reservation system established by Articles 15(4), 16(4), and their subsequent amendments is both one of the most significant and one of the most contested features of the Indian Constitution. The system of reservations, which sets aside a percentage of seats in educational institutions and public employment for Scheduled Castes, Scheduled Tribes, and Other Backward Classes, represents the Constitution's primary instrument for addressing the deep structural inequalities of caste that have scarred Indian society for millennia.

The constitutional theory of reservations is grounded in the idea of "substantive equality": the recognition that formal equality before the law is insufficient to achieve real equality of

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opportunity for groups that have been systematically excluded and disadvantaged by social structures. The reservation system is intended to create pathways of social mobility for those who have been denied opportunity by the accident of birth into a marginalized caste group.

The debate about the reservation system in India is extraordinary in its complexity, its passion, and its political salience. It is a debate that cuts across every conventional political divide and that connects to some of the deepest questions in social and political philosophy about the relationship between individual rights, group identity, social justice, and democratic legitimacy.

Critics of the reservation system from the liberal individualist tradition argue that reservations violate the principle of individual merit and that discrimination on the basis of group membership, even in favor of historically disadvantaged groups, is a form of injustice that perpetuates rather than overcomes the salience of caste identity. This argument was made most forcefully by members of forward castes who found themselves excluded from opportunities by reservation provisions, and it has had considerable influence in certain constitutional decisions.

Defenders of the reservation system from the Ambedkarite tradition argue that merit itself is a socially constructed category, that what counts as merit in any given context reflects the values and preferences of those who define it, and that in a society where educational opportunities, social networks, and cultural capital are profoundly unequally distributed along caste lines, "meritocratic" selection will perpetuate existing inequalities rather than overcome them. The argument is that reservations are not a deviation from equality but an instrument of its achievement.

The constitutional jurisprudence of reservations has been extremely complex. The Indra Sawhney case (1992) imposed a 50 percent ceiling on reservations, held that reservations in promotions were constitutionally permissible but only with evidence of inadequate representation of the reserved groups, and excluded the "creamy layer" (the more affluent and educated members of OBC communities) from the benefit of reservations. These holdings have been the subject of ongoing litigation and political controversy.

The constitutional amendment of 2019 introducing 10 percent reservations for "Economically Weaker Sections" of the population (essentially, upper-caste poor) added a new dimension to the debate. The amendment was upheld by the Supreme Court in Janhit Abhiyan v. Union of India (2022), by a 3-2 majority. The dissenting judges raised serious concerns about the constitutional validity of reservations based purely on economic criteria, outside the framework of historical discrimination and underrepresentation that had always been the constitutional basis for reservations.

The larger point is that the reservation system, whatever its merits, has not been sufficient to address the depth and breadth of caste-based inequality in India. The official "creamy layer" exclusions from OBC reservations have created new forms of intra-group inequality. The failure to extend reservations to the private sector has meant that the most rapidly growing sources of employment and economic advancement have been largely exempt from constitutional equality obligations. The inability to enforce anti-discrimination law in the private sector, in marriage

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markets, in housing, in social interaction, means that constitutional prohibitions of caste discrimination remain largely ineffective in the domains where they matter most.

CHAPTER FIVE: THE CONSTITUTIONAL CRISIS OF GOVERNANCE

5.1 The Executive-Legislature Relationship and the Concentration of Power

The parliamentary system established by the Indian Constitution is, in its formal design, a system of collective executive authority accountable to the elected legislature. The Council of Ministers is collectively responsible to the House of the People (Lok Sabha). Each minister is individually responsible for the work of their ministry. The Prime Minister is primus inter pares ("first among equals") in the Cabinet. The legislature has the power to remove the government by passing a vote of no confidence.

These formal features of parliamentary government are meant to ensure that executive power is exercised accountably, collectively, and subject to legislative oversight. In practice, however, the Indian system has evolved in ways that concentrate executive power in the Prime Minister and the Prime Minister's Office to a degree that is difficult to reconcile with the constitutional theory of collective executive responsibility.

The concentration of power in the Prime Minister and the PMO has been a feature of Indian politics since the Nehru era, but it has intensified dramatically under successive governments. The Indira Gandhi period (1966-1977, 1980-1984) saw a systematic concentration of party power, governmental power, and intelligence apparatus power in the Prime Minister's person, culminating in the Emergency. The Narendra Modi period has seen a further concentration that has been described by comparative constitutional scholars as approaching executive dominance.

The mechanisms of this concentration are multiple. Party centralization, which gives the Prime Minister control over the party organization, over the selection of candidates, and over the career prospects of legislators, creates strong incentives for legislators to defer to the Prime Minister rather than exercise independent judgment. The anti-defection law, which punishes legislators who vote against their party's position, eliminates one of the primary mechanisms of parliamentary accountability by making it legally impossible for legislators to use their votes to hold the government to account.

The concentration of executive power has been accompanied by the erosion of institutional independence in ways that have seriously damaged the capacity of constitutional institutions to perform their checking function. The Central Bureau of Investigation, formally an independent investigative agency, has been widely characterized as being used by successive central governments to harass political opponents and to protect political allies. A Supreme Court bench famously described the CBI as a "caged parrot" in 2013. The Enforcement Directorate, which has broad powers to investigate financial crimes and to attach property, has been alleged to be used selectively against opposition politicians and critics of the government.

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The Electoral Commission of India, constitutionally a key guardian of democratic processes, has faced serious questions about its independence during recent election cycles. Opposition parties and civil society organizations have raised concerns about the timing of election announcements, the enforcement of model code violations, and the responsiveness of the commission to complaints about electoral malpractice by the ruling party.

These concerns are not unique to any single government or party. The use of state institutions for partisan purposes has been a feature of Indian politics at both the central and state level for decades. But the intensity and systematic character of the concerns raised about institutional independence in the post-2014 period has prompted serious comparative constitutional scholars, including those associated with V-Dem (the Varieties of Democracy project at the University of Gothenburg) and Freedom House, to assess India as having undergone significant democratic backsliding.

V-Dem's classification of India as an "electoral autocracy" in its 2021 report, downgraded from its earlier classification as a "liberal democracy," provoked considerable controversy. The Indian government rejected the classification. But the methodology V-Dem uses, which assesses multiple dimensions of democratic quality including not only electoral processes but also freedom of expression, freedom of association, judicial independence, and civil society space, is sufficiently rigorous that its conclusions cannot simply be dismissed.

5.2 Parliament: The Declining Legislature

The Parliament of India was designed to be the supreme democratic institution of the constitutional order: the body that represented the sovereign will of the people, that held the executive to account, that made the laws by which the nation was governed, and that served as the great deliberative forum of the republic.

The reality of the Indian Parliament in 2024 and 2025 falls far short of this design. The Parliament meets for fewer sitting days than any comparable democratic legislature in the world. The Lok Sabha sits, on average, for approximately 60 to 70 days per year, compared with the House of Commons which sits for approximately 150 to 160 days, the US Congress which is formally in session for most of the year, and the French National Assembly which has constitutionally mandated sessions totalling approximately 120 days.

The quality of parliamentary deliberation has also declined dramatically. Important legislation is routinely passed in a matter of hours without committee scrutiny, without adequate debate, and often without the quorum that the Constitution requires. The three criminal procedure codes that replaced the Indian Penal Code, the Code of Criminal Procedure, and the Indian Evidence Act, the Bharatiya Nyaya Sanhita, the Bharatiya Nagarik Suraksha Sanhita, and the Bharatiya Sakshya Adhiniyam, which were enacted in 2023, were legislation of extraordinary significance that affected the fundamental legal framework governing the life and liberty of every Indian citizen. They were passed without adequate consultation with legal practitioners, state governments, constitutional scholars, or civil society, and with minimal parliamentary debate.

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The dysfunction of Parliament is partly the result of deliberate political strategies. Ruling parties that command legislative majorities have little incentive to facilitate robust parliamentary debate that might expose weaknesses in their legislation or provide platforms for opposition criticism. Opposition parties, conversely, have few effective tools to force debate and frequently resort to disruption as a strategy for drawing public attention to their concerns.

But the dysfunction also reflects structural constitutional problems. The anti-defection law, as noted, eliminates the most powerful tool of parliamentary accountability, namely the ability of individual legislators to use their votes to discipline the executive. The domination of the Rajya Sabha (the upper house, nominally a chamber of the states) by nationally organized parties rather than by state-level concerns has reduced its effectiveness as a check on central government power. The committee system, which is the heart of effective legislative scrutiny in most parliamentary systems, is underdeveloped and underused in India.

The constitutional design of the Indian Parliament was never ideal, but the combination of constitutional inadequacies and political dysfunctions has produced a legislature that is largely unable to fulfill its constitutional function as the supreme representative and deliberative institution of the republic.

5.3 The Judiciary: Independence, Accountability, and the Limits of Judicial Power

The judiciary of India is constitutionally placed at the apex of the rule-of-law architecture. Article 124 constitutes the Supreme Court, Articles 214-231 constitute the High Courts, and the provisions of Part VI create a hierarchy of subordinate courts. The independence of the judiciary from the executive and legislature is constitutionally guaranteed through provisions for security of tenure for judges, for fixed judicial salaries, and for the limitation of the jurisdiction-reducing power of Parliament.

The Supreme Court of India has, at various points in its history, delivered judgments of remarkable constitutional courage. The basic structure doctrine, the Maneka Gandhi judgment, the Vishaka guidelines on sexual harassment, the Puttaswamy privacy judgment, the reading of LGBTQ+ rights in Navtej Singh Johar v. Union of India (2018), these are decisions that have made real differences to the lives and liberties of Indian citizens.

But the Supreme Court has also, at other points in its history, delivered judgments of remarkable institutional cowardice. The ADM Jabalpur case during the Emergency has been mentioned. The delay in hearing challenges to the abrogation of Article 370 (the petitions were filed in 2019 and were heard and decided only in December 2023) has been criticized as evidence of the Court's reluctance to challenge executive action that carries significant political weight. The handling of challenges to the Citizenship Amendment Act (CAA) of 2019, which critics argue discriminates against Muslims by creating a path to citizenship for persecuted minorities from three neighboring countries while excluding Muslims from the same protection, has been criticized for delay and for the apparent reluctance of the Court to decide a case of significant constitutional importance.

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The systemic problems of the Indian judiciary go beyond its relationship with the executive, important as that is. The pendency crisis, with approximately 50 million cases pending in courts across India at all levels as of 2024, represents a failure of constitutional justice on a massive scale. Access to justice, the right to have one's legal claims heard and decided within a reasonable time, is at least implicit in the right to life and equality under the Constitution. A system in which the average time from filing to decision in a civil case in a district court is measured in years or decades, in which criminal cases routinely extend for a decade or more, in which the poor cannot afford to wait for slow justice and must often accept unjust settlements, is a system that is structurally failing its constitutional obligation.

The causes of judicial pendency are multiple and well-documented: insufficient numbers of judges relative to the size of the population (India has approximately 21 judges per million people, compared with the USA's approximately 107), inadequate physical infrastructure in many courts, procedural rules that facilitate delay, insufficient use of technology, and the sheer volume of government litigation (the government is the largest single litigant in India, and many government cases could be settled or withdrawn).

The solutions are also well-known: dramatic increase in judicial appointments, institutional reform of court procedures, mandatory case management timelines, expansion of alternative dispute resolution mechanisms, reduction of government litigation, and better legal aid. What is lacking is not knowledge of the solutions but the political will to implement them.

5.4 The Police and the State: Colonial Brutality Under Constitutional Cover

The police in India are constituted and governed by the Police Act, 1861, a law enacted by the British colonial government in the wake of the 1857 uprising, with the explicit purpose of creating a police force that would serve the interests of colonial administration rather than the interests of the people it policed. The 1861 Act establishes a hierarchical, militarized police force with broad discretionary powers of arrest and detention, minimal accountability to the communities it serves, and institutional accountability primarily to the executive government at the state level.

One hundred and sixty years after its enactment, the Police Act, 1861 remains the primary law governing the organization of the police in most Indian states. Several states have enacted their own police acts, and in 2006 the Supreme Court, in Prakash Singh v. Union of India, directed states to implement a series of police reforms designed to ensure functional independence of the police from political interference, accountability of the police to communities, and separation of the investigative function from the law-and-order function.

But the implementation of the Supreme Court's directions has been, to put it charitably, incomplete. Most states have responded to the directions minimally or not at all. The political class at the state level, which benefits from the ability to use the police as an instrument of political control, has had no incentive to create a more independent police. The result is that the Indian police, in 2024, continues to operate under a colonial framework that has been constitutionally condemned, judicially reformed on paper, and barely changed in practice.

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The consequences for citizens, particularly poor and marginalized citizens, are severe. Police brutality, custodial violence, torture, and extrajudicial killings are widespread and poorly documented. The National Human Rights Commission receives hundreds of thousands of complaints annually, but its capacity to investigate and its power to impose remedies are limited. State Human Rights Commissions are even more limited in their capacity.

The constitutional prohibition of torture under Article 21 has been repeatedly affirmed by the Supreme Court, which has held that the right to life includes the right not to be subjected to torture, cruel, inhuman, or degrading treatment. Article 22 provides procedural protections against arbitrary arrest. But these constitutional protections are routinely violated, and the legal accountability mechanisms are too weak to deter the violations.

Perhaps the most disturbing recent development is the systematic use of encounter killings (extrajudicial killings by police presented as self-defense encounters) in several states, particularly Uttar Pradesh. The UP police has reported hundreds of encounter killings in the period 2017-2024. Many of these killings have been the subject of serious human rights concerns and allegations that they are targeted killings of criminals, political opponents, or members of particular communities rather than genuine encounters. The courts have been slow to investigate, and the political environment has made accountability nearly impossible.

CHAPTER SIX: THE CONSTITUTIONAL ORDER AND ITS ENEMIES WITHIN

6.1 Majoritarianism, Religious Nationalism, and the Secular Constitution

The Constitution of India declares India to be a "secular" state, although the word "secular" was inserted into the Preamble only by the Forty-Second Amendment in 1976, during the Emergency. The secular character of the Constitution, however, predates the insertion of the word: the constitutional provisions on equality, on freedom of religion, on the prohibition of religious discrimination in state activity, and on the state's obligation not to establish or favor any religion, together constitute a secularism that is, in the Indian understanding, not hostile to religion (as French laicite is) but equidistant from all religions, treating all citizens equally regardless of religious affiliation.

The challenge to constitutional secularism from Hindu nationalism is the most significant constitutional challenge of the current era. The ideology of Hindutva, which seeks to define Indian national identity primarily in terms of Hindu cultural civilization and which views the constitutional commitment to Muslim and Christian minority rights as a form of "minority appeasement," has been the driving force of the BJP's political rise. The BJP's electoral dominance since 2014 has been accompanied by a significant shift in public discourse, in state policy, and in constitutional interpretation in directions that critics argue are incompatible with the secular constitution.

The specific constitutional challenges associated with the rise of Hindu nationalism include: the abrogation of Article 370, which had granted special constitutional status to the Muslim-majority

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state of Jammu and Kashmir; the Citizenship Amendment Act (CAA) of 2019, which creates a path to Indian citizenship for persecuted minorities from Afghanistan, Bangladesh, and Pakistan but explicitly excludes Muslims; the construction of the Ram temple at Ayodhya on the site of the demolished Babri Masjid, consecrated by the Prime Minister in January 2024 in a ceremony that was widely described as blurring the constitutional line between the state and Hindu religious institution; the increasing prevalence of anti-conversion laws in BJP-governed states that critics argue discriminate against conversions from Hinduism while leaving conversions to Hinduism unregulated; and the systematic use of the judicial and administrative machinery against Muslim individuals and institutions in ways that critics describe as constituting a pattern of official discrimination.

The relationship between these developments and the Constitution is contested. Defenders of the current government argue that its policies are consistent with the Constitution, that the Supreme Court has upheld most of the contested legislation (or at least not struck it down), and that characterizing elected government policy as unconstitutional merely because it reflects the preferences of the majority is itself a form of anti-democratic elitism.

Critics respond that constitutionalism is precisely the project of placing limits on what majorities may do to minorities, and that a Supreme Court that is reluctant to enforce those limits when it is electorally and politically inconvenient to do so is failing its fundamental constitutional function. The academic and comparative constitutional literature is heavily weighted toward the critics' view: the V-Dem and Freedom House assessments, the assessments of scholars like Milan Vaishnav, Ashutosh Varshney, Christophe Jaffrelot, and the contributors to journals including the Journal of Democracy and the Annual Review of Political Science, consistently describe the post-2014 period as one of significant democratic and constitutional erosion driven by majoritarian populism.

6.2 The Emergency Powers Revisited: UAPA, NSA, and the Surveillance State

While India has not declared a formal national emergency since 1977, the last three decades have seen the steady expansion of what one might call "normalized emergency powers": statutory authorizations for detention without trial, broad prohibitions on specified organizations and their membership, expansive definitions of terrorism that criminalize a wide range of political activities, and the growth of surveillance capabilities that enable the state to monitor the communications of citizens on a large scale without meaningful judicial oversight.

The Unlawful Activities (Prevention) Act, 1967 (amended significantly in 2004, 2008, 2012, and 2019) is the central instrument of this normalized emergency. Under the UAPA as amended, the government can designate both organizations and individuals as "terrorists," can authorize detention without trial for up to six months (extendable), and reverses the presumption of bail (meaning that the accused must prove that she or he is innocent of the charges before being granted bail). The UAPA has been used against Maoists, Kashmir separatists, SIMI activists, alleged ISIS sympathizers, and, increasingly, against democratic activists, journalists, academics, and human rights defenders.

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The case of the Bhima Koregaon defendants, a group of academics, lawyers, and activists arrested under the UAPA in 2018 in connection with alleged Maoist links, has attracted extensive international attention. The defendants, who include 82-year-old Father Stan Swamy (who died in custody in 2021 before his trial) and scholars of recognized international standing, have been held in pre-trial detention for years. The digital evidence used against them has been seriously questioned: a forensic analysis by Arsenal Consulting, an American digital forensics firm, found that malware had been used to plant incriminating documents on the computers of at least some of the defendants. The Supreme Court has been slow to intervene, and the constitutional questions raised by the case remain unresolved.

The surveillance capabilities of the Indian state have expanded dramatically with the proliferation of digital communications. The Pegasus spyware controversy of 2021, in which reports by the Forbidden Stories consortium indicated that the phones of Indian journalists, politicians, activists, and judges had been targeted by Pegasus spyware sold only to governments, raised serious constitutional questions about state surveillance that the government declined to address and that the Supreme Court investigated in a limited way without reaching definitive conclusions. The fact that the Personal Data Protection Bill, which would have created a legal framework for the regulation of state and private surveillance, was introduced, then withdrawn, and then replaced by the Digital Personal Data Protection Act, 2023, which critics argue is weaker than its predecessor on state surveillance, suggests that the government has little interest in constraining its own surveillance capabilities.

6.3 Contempt of Court, Free Speech, and the Constitutional Balance

The constitutional tension between freedom of speech and the authority of the courts is one that has not been well-resolved in India. The Constitution guarantees freedom of speech under Article 19(1)(a) but permits restrictions on that freedom on grounds including "contempt of court" under Article 19(2). The Contempt of Courts Act, 1971 defines criminal contempt to include "scandalizing the court" or "lowering the authority of any court," and the Supreme Court has at various times used this power to silence criticism of its own institutional conduct.

The use of contempt power against individuals who have criticized specific judicial decisions, specific judges, or the institutional culture of the courts is constitutionally problematic because it gives the judiciary a tool for self-protection that is inconsistent with the democratic principle that all institutions of government, including the judiciary, must be open to public scrutiny and criticism. The prosecution of prominent advocate Prashant Bhushan in 2020, who was convicted of criminal contempt for tweets criticizing the Chief Justice's conduct and the Supreme Court's institutional failures during the COVID pandemic, attracted substantial national and international criticism.

The broader question of the relationship between judicial authority and free speech is deeply contested. Courts in other democracies have generally resolved it by adopting a narrow definition of contempt that does not include the "scandalizing the court" doctrine, on the ground that courts, as institutions of public authority, must be accountable to public criticism. The United Kingdom, from whose legal tradition India inherited the contempt of court doctrine, abolished the offense

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of "scandalizing the court" in 2013, on the recommendation of the Law Commission, after the case of Her Majesty's Attorney General v. Dodds. India has not followed suit.

CHAPTER SEVEN: POWER DISTRIBUTION AND THE MANY INDIAS

7.1 Linguistic Nationalism and the Constitutional Settlement of Language

India is home to more than a thousand distinct languages and dialects. The constitutional settlement of the language question is contained in Part XVII (Articles 343-351) and the Eighth Schedule, which lists "recognized" languages. The Eighth Schedule originally listed 14 languages and now lists 22, following various amendments. Hindi is the official language of the Union, with English permitted as an additional official language for official purposes until Parliament provides otherwise, which Parliament has not done.

The constitutional language settlement has been a source of persistent political conflict, most dramatically in the Tamil Nadu anti-Hindi agitations of 1964-1965, which resulted in substantial violence, loss of life, and the indefinite continuation of English as an official language. The conflict between Hindi as a "national" language and the linguistic rights of the non-Hindi speaking states (which constitute the majority of India's population) has not been resolved by the constitutional settlement, which has merely managed it.

The Official Languages Act, 1963, and subsequent amendments have established a complicated regime of translation and multilingualism in central government functioning that is functionally inadequate: neither the Hindi-speaking majority nor the non-Hindi speaking minority is well-served by a system in which important government documents exist in multiple languages of varying quality and reliability, in which courts at the High Court and Supreme Court levels conduct their proceedings primarily in English, and in which the effective language of administration, business, and advancement is neither Hindi nor any of the scheduled regional languages but English.

The class implications of this situation are profound. English-medium education confers decisive advantages in the competition for government employment, professional careers, and economic advancement. Access to English-medium education is heavily correlated with social class: the wealthy send their children to private English-medium schools, the poor must make do with state schools that nominally teach in the regional language but do so often poorly. The result is a society in which language is a profound marker of class privilege and a mechanism of social reproduction that the constitutional language settlement has failed to address.

7.2 Tribal Rights, the Fifth and Sixth Schedules, and the Ongoing Dispossession

The Fifth and Sixth Schedules of the Indian Constitution create a special constitutional framework for the governance of "Scheduled Areas" and "Tribal Areas": regions inhabited predominantly by Scheduled Tribe communities, which the Constitution recognizes as having

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distinctive cultural identities, land rights, and governance traditions that warrant special protection.

The Fifth Schedule applies to tribal areas in most states and provides for the establishment of Tribal Advisory Councils, the power of the Governor to modify or repeal central and state legislation in relation to these areas, and restrictions on the transfer of land from tribes to non-tribes. The Sixth Schedule applies to tribal areas in the northeastern states and provides for a more elaborate system of autonomous district councils with legislative and judicial powers.

These constitutional protections are significant. They represent a recognition that tribal communities have claims against the state and against majoritarian democratic processes that go beyond the standard protections offered to all citizens. They acknowledge that the history of tribal dispossession, the loss of forests, land, and cultural integrity through colonial conquest and subsequent state action, creates special constitutional obligations.

But the gap between constitutional protection and lived reality is enormous. Tribal communities in the Fifth Schedule states continue to face systematic dispossession of their lands for mining, dam construction, infrastructure projects, and plantation development. The Forest Rights Act, 2006, which was intended to recognize the historic rights of forest-dwelling communities over forest land and resources, has been implemented unevenly and with considerable hostility from forest bureaucracies that have resisted the recognition of tribal rights.

The conflict between tribal land rights and the state's developmental agenda (in the form of mineral extraction, power generation, and infrastructure construction) has been the site of some of the most intense political violence in independent India. The Maoist or Naxalite movement, which has been active in tribal areas of Jharkhand, Chhattisgarh, Odisha, and adjacent states for decades, draws its political base substantially from the dispossessed tribal and rural poor communities of these regions. The state's response to the Maoist movement, which has included large-scale security operations under the framework of Operation Green Hunt and its successors, has been associated with serious human rights violations including extrajudicial killings, displacement, and the burning of villages.

The constitutional protection of tribal rights has been inadequate not because of the inadequacy of the constitutional text alone, but because the constitutional framework has been operationalized by a bureaucratic state apparatus that has inherited, from the colonial period, a deep suspicion of indigenous autonomy and a strong disposition to regard mineral-rich tribal lands as "wastelands" available for developmental appropriation.

7.3 Dalit Constitutional Rights and the Limits of Legal Protection

The abolition of untouchability under Article 17 of the Constitution is one of the most unequivocal provisions of the document. Article 17 provides that "Untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of Untouchability shall be an offence punishable in accordance with law."

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The Protection of Civil Rights Act, 1955 and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (the Atrocities Act) are the primary legislative instruments for the enforcement of this constitutional prohibition. The Atrocities Act, in particular, defines a comprehensive list of atrocities committed against members of scheduled castes and scheduled tribes, including murder, rape, destruction of property, forced labor, humiliation, and various forms of social exclusion, as offenses carrying severe penalties.

And yet untouchability practices persist in India on a massive scale. Social discrimination, economic exclusion, physical violence, and sexual exploitation based on caste identity continue to characterize the experiences of millions of dalit citizens. Intercaste marriages, particularly marriages between dalits and forward-caste individuals, are regularly met with violence, often condoned or perpetrated by local communities with little response from state authorities. The manual scavenging of human excreta, perhaps the most visceral form of caste-based forced labor, continues despite the Prohibition of Manual Scavenging Act, 2013.

The implementation of the Atrocities Act has been deeply inadequate. The conviction rate in atrocities cases is notoriously low. Police are often reluctant to register FIRs (First Information Reports) under the Act, preferring instead to characterize caste-based violence as ordinary criminal cases. The bail provisions of the Act, which were intended to prevent the intimidation of victims by denying bail to accused persons, were weakened by a Supreme Court judgment in Subhash Kashinath Mahajan v. State of Maharashtra (2018) that required preliminary investigation before arrest in atrocities cases, a provision subsequently overturned by Parliament but which resulted in a period during which the protective features of the Act were substantially reduced.

The constitutional commitment to dalit rights is repeatedly articulated but persistently undelivered. This gap between constitutional promise and social reality is not primarily a legal problem: it is a social and political problem that reflects the continuing power of caste hierarchy in Indian society and the unwillingness of state institutions staffed predominantly by forward-caste individuals to aggressively enforce laws that challenge the social order from which they benefit.

CHAPTER EIGHT: INDIA'S FOREIGN POLICY, THE CONSTITUTION, AND THE NEIGHBOR PROBLEM

8.1 Constitutional Framework of Foreign Policy and Its Democratic Deficit

The Constitution of India's framework for foreign policy is strikingly thin. Article 246 read with Entry 14 of the Union List gives Parliament legislative power over "entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries." Article 73 vests the executive power of the Union in the President, which in practice means in the Council of Ministers, for matters including foreign affairs. Article 51, a Directive Principle, directs the state to "endeavour to foster respect for international law

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and treaty obligations in the dealings of organized peoples with one another" and to "promote international peace and security."

There is no constitutional requirement of parliamentary approval for the conclusion of treaties. There is no constitutional framework for the integration of international law into domestic law (India follows a dualist approach: treaties only become domestic law when incorporated by Parliament). There is no constitutional requirement of public consultation or debate before the adoption of major foreign policy positions. There is no constitutional right of citizens to access information about the government's foreign policy positions or negotiating stances.

This democratic deficit in foreign policy is not unique to India: it characterizes most parliamentary democracies. But it has particular consequences in the Indian context.

First, the concentration of foreign policy decision-making in the executive, with minimal legislative or public scrutiny, has allowed Indian governments to make major strategic commitments, to participate in multilateral negotiations with significant implications for domestic law and sovereignty, and to adopt foreign policy positions with major consequences for regional peace and security, without adequate democratic deliberation.

Second, the constitutional framework's silence on the relationship between India's international commitments and the rights of its citizens has created legal ambiguity in several important areas. India is a party to major international human rights treaties including the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), but the provisions of these treaties are not directly enforceable in Indian courts. The domestic legal status of India's international human rights commitments depends entirely on the willingness of courts to use them as interpretive aids in constitutional adjudication, which they do inconsistently.

8.2 The Constitution and India's Neighborhood: A Structural Analysis

India's relationships with its immediate neighbors, Pakistan, Bangladesh, China, Nepal, Sri Lanka, Bhutan, and Myanmar, have been shaped by a complex mix of historical legacies, strategic interests, economic linkages, and ethnic and cultural connections that cross-cut international borders. The constitutional framework has both enabled and constrained India's capacity to manage these relationships effectively.

The partition of British India in 1947 was itself a constitutional event with catastrophic regional consequences. The geographical division of the subcontinent, the displacement of approximately 15 million people, and the ongoing Kashmir conflict are all direct consequences of the constitutional moment of 1947, of the decisions made about the partition of territory, the accession of the princely states, and the demarcation of boundaries. The Indian Constitution's claim to certain territories, its treatment of Kashmir as an integral part of India, and the absence of any constitutional mechanism for the peaceful resolution of territorial disputes through negotiation or popular consultation, have contributed to a framework of regional relations characterized by zero-sum competition rather than cooperative integration.

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The relationship with Pakistan is the most obvious case. The Indian Constitution treats Jammu and Kashmir as an integral part of India, as it has since the Instrument of Accession signed by Maharaja Hari Singh in October 1947. Pakistan's claim to Kashmir is constitutionally invisible from India's perspective: the Indian constitutional framework has no mechanism for acknowledging, let alone negotiating with, Pakistan's position. The abrogation of Article 370 in 2019 further hardened this position: by converting J&K into a Union Territory and eliminating its special constitutional status, the Indian government made a major unilateral constitutional change that further reduced the possibility of the kind of flexible political arrangements that might, over time, create a basis for bilateral settlement.

The relationship with China is shaped partly by the contested boundary question, which involves territorial claims by both countries in the western sector (Aksai Chin) and the eastern sector (Arunachal Pradesh), and partly by the broader strategic competition between Asia's two largest powers. The Indian Constitution has no mechanism for the resolution of territorial disputes with China except through bilateral negotiation, and the constitutional framework of territorial integrity makes formal compromise difficult because any concession of claimed territory could be challenged before the Supreme Court as an unconstitutional amendment of Article 1 (which defines the territory of India).

The relationship with Bangladesh involves issues of undocumented migration, border management, water-sharing (the Teesta river dispute), and the status of Bengali-speaking communities in border areas. The National Register of Citizens (NRC) exercise in Assam, which was intended to identify undocumented Bangladeshi migrants, has created massive constitutional controversy about the citizenship rights of millions of people who have lived in Assam for decades, about the burden of proof in citizenship determination, and about the relationship between citizenship documentation requirements and the rights of poor, illiterate, and marginalized people who cannot easily produce historical documentary evidence.

The Citizenship Amendment Act (CAA) of 2019, which creates a path to citizenship for non-Muslim minorities from Bangladesh, Pakistan, and Afghanistan, was presented partly as an instrument for addressing the refugee flows generated by religious persecution in neighboring countries. Its critics argue that it violates the constitutional equality guarantee by creating a religion-based path to citizenship, that it will in combination with the NRC be used to render Muslim residents of border areas stateless, and that it represents a fundamental departure from the constitutional understanding of citizenship as a relationship between the individual and the state that is not mediated by religious identity.

8.3 Geopolitical Irresponsibility and the Constitutional Structure

The Indian Constitution does not engage seriously with the question of how a large, diverse, and powerful state should conduct its relationships with smaller, weaker neighbors. The Directive Principles include a vague direction to "promote international peace and security," but this provides no guidance for the specific choices of regional foreign policy.

The pattern of India's relationships with its smaller neighbors reveals a consistent tendency to use size, economic leverage, and strategic position as instruments of coercive diplomacy rather

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than as resources for the construction of genuinely cooperative regional relationships. The 2015 economic blockade of Nepal, which India enforced for several months after Nepal adopted a new constitution that India found objectionable partly because of its provisions on federalism affecting the Madhesi plains communities, is a striking example. The blockade caused serious economic harm to one of the world's poorest countries and generated profound anti-India sentiment in Nepal that has not fully dissipated.

The relationship with Sri Lanka during and after the civil war, the treatment of Tamil Nadu's concerns about the rights of Tamil Sri Lankans, and the Indian government's support for the Sri Lankan government at the end of the civil war despite credible allegations of war crimes, raise similar questions about the relationship between India's constitutional commitment to human rights and equality and its foreign policy choices.

The relationship with Myanmar, and India's policy toward the military junta that seized power in February 2021, illustrates the tension between India's constitutional values and its strategic interests. India has been reluctant to forcefully condemn the Myanmar coup or to exert meaningful pressure on the junta, partly because of concerns about Chinese influence and partly because of border management and security cooperation interests. The decision in 2024 to revoke the Free Movement Regime (FMR) agreement that had allowed residents of border areas to cross the India-Myanmar border freely, and to begin construction of a border fence, was made without meaningful constitutional deliberation or public consultation.

These patterns of regional relations are not solely constitutional problems: they reflect strategic calculations, domestic political pressures, bureaucratic inertia, and historical legacies that are not reducible to constitutional design. But the constitutional framework's failure to create mechanisms for democratic deliberation about foreign policy, to integrate international human rights obligations into domestic legal reasoning, and to provide any check on executive foreign policy adventurism, contributes to a regional relationships framework that is too frequently characterized by coercion, short-term strategic calculation, and indifference to the human consequences of state policy.

CHAPTER NINE: THE PHILOSOPHICAL FOUNDATIONS AND THEIR DISTORTIONS

9.1 Ambedkar's Constitutional Vision and Its Betrayal

B.R. Ambedkar is the figure who looms largest over the Indian Constitution, both as its principal drafter and as the most profound critic of the social conditions that the Constitution was supposed to address. Ambedkar's constitutional vision was shaped by his experience of caste discrimination, by his deep engagement with Western legal and political philosophy, by his study of Buddhism and its alternative to the caste social order, and by his long political struggle on behalf of the untouchable communities to which he belonged.

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Ambedkar's constitutional vision was not simply about legal equality: it was about the abolition of the social conditions that made legal equality meaningless. He understood with extraordinary clarity that a constitution that created formal legal equality without addressing the economic and social foundations of inequality would produce a document of profound hypocrisy.

In his famous closing speech to the Constituent Assembly in November 1949, Ambedkar articulated what he called the contradiction at the heart of the new constitution: "On 26th January 1950, we are going to enter into a life of contradictions. In politics we will have equality and in social and economic life we will have inequality."

This contradiction has not been resolved. In the seven and a half decades since independence, India has made genuine, though uneven, progress on some dimensions of social and economic inequality. The abolition of legal untouchability, the reservation system, the growth of a dalit middle class through reservations and economic growth, the emergence of dalit political power in states like Uttar Pradesh and Maharashtra, these are real achievements. But the structures of caste discrimination, economic exploitation, and social exclusion that Ambedkar identified as incompatible with genuine democracy continue to characterize Indian society at a deep level.

Ambedkar's other great concern was about the relationship between social unity and political democracy. He was deeply skeptical about the capacity of a society fragmented by caste hierarchy and communal divisions to sustain genuine democratic politics. He feared that social fragmentation would produce political fragmentation, factional politics, the capture of democratic institutions by social elites, and the conversion of democratic forms into instruments of continued dominance by established interests.

His fear has been substantially vindicated. Indian democratic politics is characterized by the mobilization of caste and communal identities as the primary political currencies, by the dominance of political parties that are, in practice, vehicles for particular social communities or family networks rather than organizations of programmatic principle, and by the consistent failure of the political system to deliver on its constitutional commitments to the poorest and most marginalized citizens.

Ambedkar's own response to this failure was radical: he converted to Buddhism in 1956, explicitly rejecting Hinduism as incompatible with human dignity, and he continued to argue that the transformation of Indian society required not merely constitutional change but what he called a "social revolution." His argument was that the Indian Constitution had placed a legal structure of equality on the social foundations of hierarchy, and that without the transformation of those foundations, the legal structure would be distorted and ultimately captured by the social forces it was supposed to constrain.

9.2 Nehru's Constitutional Imagination and Its Paradoxes

Jawaharlal Nehru's constitutional imagination was shaped by his commitment to a particular vision of modernity: scientific, secular, socialist, and democratic. He believed that India's poverty and social backwardness were consequences of colonialism and of the superstitions and hierarchies that colonialism had reinforced, and that the project of development was

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simultaneously a project of national liberation, social transformation, and scientific enlightenment.

Nehru's constitutional vision is most clearly expressed not in the Constitution itself but in the Preamble's famous phrase "socialist, secular, democratic Republic" and in the Directive Principles' program of economic and social transformation. It is also expressed in the Planning Commission, a body he established outside the Constitution but which became the primary instrument of the developmental state's planning functions, and in the Public Sector Undertakings that he used to build the "commanding heights" of the Indian economy under state direction.

The paradoxes of Nehru's constitutional vision are, in retrospect, difficult to overlook.

The first paradox is between democratic values and developmental imperatives. Nehru believed in democracy but he also believed in planning, in the concentration of developmental decision-making in expert bodies, in the hierarchical management of the economy from the top. These commitments were in tension with each other, and the tension was frequently resolved in favor of the planned, expert-managed approach over the democratic, participatory one.

The second paradox is between secularism and the communal settlement. Nehru was a genuine secular in his personal convictions, but his management of the Hindu-Muslim question was shaped by political calculations that included accommodating Hindu nationalist sentiment in ways that compromised the neutrality of the secular state. The Hindu Code Bills of the 1950s, which reformed Hindu personal law to provide better rights for Hindu women, did not extend to reform of Muslim personal law, partly for fear of Muslim communal resistance. This differential treatment, whatever its pragmatic justification, created a constitutional inconsistency that has been exploited by Hindu nationalists ever since as evidence that "secularism" means "appeasement of Muslims."

The third paradox is between anti-colonialism and the colonial inheritance. Nehru was a passionate anti-colonial thinker who had written brilliantly about the history of India's subjugation and who understood the depth of the colonial deformation of Indian society. And yet, as Prime Minister and as the dominant figure in the Constituent Assembly, he oversaw the retention of the most centralizing and most repressive elements of the colonial constitutional framework, justified as necessities of the developmental state.

9.3 Constitutional Morality Versus Popular Morality: A Philosophical Analysis

In his speech to the Constituent Assembly, Ambedkar quoted the British utilitarian philosopher Jeremy Bentham to draw a distinction between "constitutional morality" and "popular morality." Constitutional morality, for Ambedkar, meant a commitment to the forms and processes of constitutional governance, including protection for minorities, the rule of law, and the equal application of fundamental rights, even when and especially when these requirements conflict with the preferences of the majority. Popular morality, by contrast, refers to the actually existing moral beliefs and practices of the population, which in India's case are deeply shaped by caste hierarchy, religious prejudice, and communal identities.

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Ambedkar's argument was that democratic government cannot simply be the expression of popular morality, because in a deeply unequal society, the "popular morality" that democratic majorities express may be the morality of the dominant, not the morality of the equal and free. Constitutional morality, the commitment to governance through rules that protect everyone equally, is a higher standard than popular morality, and it requires institutions, particularly judicial institutions, committed to maintaining that higher standard against the pressures of majoritarian democracy.

This argument has become the touchstone of the most important constitutional debates in contemporary India. The Supreme Court's invocation of "constitutional morality" in Navtej Singh Johar v. Union of India, to hold that the criminalization of homosexuality under Section 377 of the Indian Penal Code violated the Constitution, was explicitly grounded in Ambedkar's distinction: the Court held that the popular morality that viewed homosexuality as unnatural and criminal could not override the constitutional morality of equality and dignity.

The BJP government and its supporters have resisted the "constitutional morality" framework, arguing that it is used by an unelected judiciary to override the democratic preferences of the elected majority. This argument has force as a democratic-theory argument, even if it is sometimes made in bad faith. The question of who gets to define "constitutional morality," and whether that definition can be done legitimately by an unrepresentative and relatively inaccessible judiciary, is a genuine and unresolved constitutional question.

The deeper philosophical issue is about the relationship between constitutionalism and democracy. A constitution that simply enacts the will of the majority at the moment of its creation or at any subsequent moment is not a constitution at all: it is merely legislation. The point of a constitution is to pre-commit the political order to certain principles that are to be held firm even under majoritarian pressure. This pre-commitment is, by definition, anti-majoritarian in a limited sense: it constrains what majorities may do.

But the legitimacy of this constraint depends on the legitimacy of the pre-commitment itself. And the Indian Constitution's pre-commitment was made by a Constituent Assembly that, as we have argued, was not fully representative of the Indian people. The claim of the Constitution, mediated through judicial interpretation by an unrepresentative judiciary, to override the preferences of elected majorities, is therefore a claim that has a more complex legitimacy structure than its defenders sometimes acknowledge.

CHAPTER TEN: THE NEED FOR FUNDAMENTAL CONSTITUTIONAL RECONSTITUTION

10.1 The Case for Reconstitution: Arguments and Counterarguments

The case for fundamental constitutional reconstitution, rather than mere amendment, rests on several distinct grounds that need to be distinguished and evaluated separately.

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The historical argument holds that the current Constitution is too deeply marked by its colonial origins to serve as a genuine instrument of popular sovereignty. The borrowing from the Government of India Act, 1935, the retention of colonial administrative structures, the translation of colonial administrative logic into republican constitutional form, these are defects that cannot be remedied by amendment because they are built into the fundamental architecture of the document. This argument has force, but it needs to be qualified by the recognition that some of the colonial heritage (such as the parliamentary system, the common law tradition, the rule-of-law framework) has value that should be retained in any reconstituted order.

The representational argument holds that the current Constitution lacks democratic legitimacy because it was not made by a fully representative constituent process. The Constituent Assembly, elected on a restricted franchise, did not genuinely represent the majority of India's population, particularly the rural poor, the dalits, the adivasis, the women, and the non-English-literate citizens. A genuinely democratic constitution requires a genuinely democratic constitution-making process. This argument is compelling in principle but raises the practical question: what kind of constituent process would be genuinely democratic, and who would organize and control it?

The structural argument holds that the fundamental structural choices of the current Constitution, the centralized "quasi-federal" architecture, the presidential-gubernatorial appointment system, the parliamentary electoral system, the non-justiciable directive principles, the preventive detention framework, these are structural choices that have produced demonstrably harmful outcomes over seven decades and that cannot be adequately reformed through the amendment process because they are too deeply embedded in the constitutional architecture.

The social justice argument holds that the current Constitution has failed to deliver on its promises to the most marginalized citizens, and that this failure is not accidental but is built into the class character of a constitution drafted by an elite, for a population it did not fully represent, using constitutional instruments (particularly the non-justiciability of social and economic rights) that protected elite privileges while leaving the transformation of social inequality to the goodwill of the same political class that benefited from its continuation.

Against these arguments for reconstitution, there are powerful counterarguments.

The stability argument holds that constitutional stability is itself a significant value, that the disruption of a known constitutional order involves significant risks of political and social instability, and that the current Constitution, whatever its defects, has supported seven decades of democratic governance in a country of extraordinary diversity and complexity. This argument has force but must be weighed against the costs of continued constitutional inadequacy.

The capture argument holds that any process of fundamental constitutional reconstitution is at risk of capture by the currently dominant political force, and that a "new constitution" written by or for the BJP and RSS would be worse, from the perspective of minority rights, federalism, and secular values, than the current one. This is a serious concern and deserves serious attention. But it is an argument against a particular process of reconstitution, not against reconstitution in principle.

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The incrementalism argument holds that many of the constitutional reforms that are needed can be achieved through the existing amendment process, and that the risks of reconstitution outweigh the benefits of the incremental alternative. This argument is weakened by the historical record: over seventy years, the amendment process has failed to achieve many of the structural reforms that are most urgently needed. The anti-defection law, for example, was supposed to strengthen parliamentary accountability but has in practice reduced it. The 73rd and 74th amendments were supposed to genuinely empower local self-government but have had limited effect because they did not address the fundamental problems of fiscal autonomy and state-level political resistance to devolution.

10.2 Theoretical Frameworks for Constitutional Reconstitution

If we are to seriously engage with the question of constitutional reconstitution, we need theoretical frameworks for thinking about what a better constitution would look like. Several theoretical traditions offer resources for this thinking.

Akhil Reed Amar's theory of "popular sovereignty" as the foundation of constitutional authority offers the principle that a new Indian constitution should be made through a genuine constituent process, one that involves broad popular participation, that is preceded by extensive public deliberation, and that produces a document that can genuinely claim to represent the constituent will of the Indian people. This would require a constituent assembly elected by universal suffrage, with proportional representation to ensure the inclusion of marginalized voices, preceded by a multi-year process of public consultation and deliberation.

John Rawls's theory of justice as fairness offers the principle that constitutional fundamentals should be chosen from behind a "veil of ignorance," not knowing one's position in the social hierarchy, so that the choices made will be ones that protect the interests of the least advantaged as well as the most advantaged. Applied to India's constitutional reconstitution, this principle suggests that constitutional provisions should be evaluated by asking: are these provisions ones that a person would choose if they did not know whether they would be born dalit or brahmin, rich or poor, Hindu or Muslim, Hindi-speaking or Tamil-speaking? The answer to that question would produce a very different constitutional architecture from the one that was chosen in 1950.

Amartya Sen's capabilities approach to justice offers the principle that constitutional evaluation should be based not on the formal rights that a constitution guarantees but on the real freedoms (capabilities) that it enables citizens to exercise. Applied to India, this approach suggests that a constitution should be evaluated by asking: does it genuinely enable every citizen to live a dignified, flourishing life? A constitutional order that formally guarantees free speech but allows poverty, illiteracy, and caste discrimination to prevent most citizens from effectively exercising that right is a constitutional order that fails the capabilities test.

The republican tradition of constitutional theory, associated with scholars like Philip Pettit and Frank Michelman, emphasizes the importance of non-domination as a constitutional value: not merely the absence of interference in citizens' choices, but the absence of the structural capacity of the powerful to dominate the less powerful. Applied to India, the republican tradition suggests that a constitution should be designed to prevent the kinds of structural domination that

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characterize the current order: the domination of the Centre over the states, of the executive over the legislature, of the upper castes over the lower castes, of the formal sector over the informal sector, of the landed over the landless.

10.3 The British Constitutional Legacy: What Must Be Kept and What Must Be Discarded

The question of the British constitutional legacy is not simply one of colonial injustice to be overcome. The British constitutional tradition has bequeathed to India some institutions and practices that have genuine value and that would be unwise to discard: the common law system, the rule of precedent, the writ jurisdiction, the adversarial legal system with its strong protections for the accused in criminal proceedings, the tradition of judicial independence expressed through security of tenure and irreducibility of salaries, the parliamentary system's mechanisms of collective responsibility and question time, the tradition of a professional civil service distinct from the political executive.

These are real achievements, and they should not be swept away in the name of decolonization. Decolonization does not require the rejection of all aspects of legal and constitutional culture that have British origins: it requires the critical appropriation of useful institutions while rejecting their colonial and repressive elements.

What must be discarded is clear: the preventive detention framework, the emergency powers architecture modeled on the 1935 Act, the gubernatorial appointment system, the colonial police framework, the colonial-era laws that have been used against political dissent (now replaced in name but not in spirit by the UAPA and similar legislation), and the centralized fiscal framework that reduces state governments to financial dependents of the Centre.

What must be fundamentally reformed is also clear: the electoral system (from FPTP to a proportional or mixed system), the Constitution-making of foreign policy (requiring parliamentary and public deliberation), the appointment and accountability mechanisms for the higher judiciary, the constitutional status of social and economic rights (making them justiciable), and the constitutional framework for local self-government (giving it genuine fiscal and administrative autonomy).

10.4 Recent Constitutional Controversies and Their Systemic Significance

The period 2024-2026 has seen a remarkable intensification of constitutional controversies in India that illuminate the structural problems analyzed in this textbook.

The passage of the Waqf (Amendment) Act, 2025, which reorganized the governance of Muslim religious endowments by including non-Muslim members in the Waqf boards and modifying procedures for the identification of Waqf properties, provoked intense controversy. Critics argued that the Act violated the religious autonomy of the Muslim community protected by Articles 25 and 26 of the Constitution, that it was a political intervention in Muslim religious affairs with no parallel in the treatment of Hindu religious endowments, and that it was part of a systematic legislative campaign to undermine the institutional autonomy of Muslim civil society. The Constitutional validity of the Act has been challenged in the Supreme Court.

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The Supreme Court's judgment in the Cauvery river water dispute, the ongoing legal battles over the Governor-government conflicts in Kerala, Tamil Nadu, and Telangana, the constitutional challenges to the abrogation of Article 370 (which the Supreme Court upheld in December 2023), the challenge to the electoral bonds scheme (struck down in February 2024), and the ongoing challenges to the CAA, together constitute a constitutional crisis of accumulation: not one single constitutional breakdown, but a pattern of constitutional strain across multiple institutions and in multiple dimensions simultaneously.

The Immigration and Foreigners Act, 2025, which replaced earlier colonial-era laws on immigration, raised concerns about executive discretion in determining the status of persons who could not produce documentation of their nationality, about the treatment of stateless persons, and about the rights of persons who had lived in India for extended periods without documentation. The Act's provisions on detention and deportation have been described by critics as potentially rendering long-term Indian residents vulnerable to summary deportation without adequate procedural protection.

These controversies are not isolated events. They are symptoms of a constitutional order under strain, of an accumulation of structural problems that have not been adequately addressed through the normal mechanisms of constitutional maintenance, and of a political environment in which the constitutional framework is being tested in unprecedented ways.

CHAPTER ELEVEN: CONSTITUTIONAL THEORY AND THE CRISIS OF DEMOCRATIC LEGITIMACY

11.1 Deliberative Democracy and the Indian Constitutional Deficit

The theory of deliberative democracy, associated most prominently with Jurgen Habermas and elaborated in diverse directions by scholars including John Dryzek, Seyla Benhabib, and Ian Shapiro, holds that democratic legitimacy derives not merely from the formal authorization provided by electoral majorities but from the quality of deliberation that produces political decisions. A decision is democratically legitimate if it results from a process in which all affected parties have had a genuine opportunity to participate, in which reasons for and against the decision have been publicly exchanged and considered, and in which the decision reflects a genuine effort to serve the common good rather than merely the preferences of the majority.

Measured by this standard, the Indian constitutional order has serious deliberative deficits. Parliamentary deliberation, as noted, is thin, rushed, and dominated by the ruling party. Constitutional amendments are passed without adequate public deliberation or cross-party negotiation. Major policy decisions with constitutional implications, such as the demonetization of 2016, which the Supreme Court ultimately upheld by a 4-1 majority in a deeply controversial judgment, are made without public consultation, without parliamentary scrutiny, and without the kind of broad deliberative engagement that the scale of their consequences warranted.

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The legal scholar Lawrence Tribe, commenting on constitutional design in emerging democracies, has argued that the quality of constitutional deliberation is at least as important as the quality of constitutional text: a well-designed constitution produced through a flawed deliberative process is less likely to generate genuine public commitment than a more modestly designed constitution produced through extensive, inclusive, and genuine deliberation. By this standard, India's constitution-making process in 1946-1950, for all its genuine achievements, was deliberatively inadequate, and the deficit of democratic legitimacy that it created has never been fully repaired.

11.2 The Constitutional Economics of Inequality

The relationship between constitutional design and economic inequality has been a focus of significant recent scholarship in constitutional economics and in the economics of institutions. Scholars including Daron Acemoglu and James Robinson, in their influential work on the role of institutions in economic development, have argued that "extractive institutions," which concentrate economic and political power in the hands of a narrow elite and use that power to extract rents from the rest of the population, are both politically persistent (because the elite benefits from their continuation) and economically destructive (because they prevent the broad-based investment in human capital and productive activity that drives long-term economic development).

The Indian constitutional order has both "inclusive" and "extractive" features, and the balance between them has shifted significantly over time. The constitution-making process in 1946-1950 established inclusive political institutions (universal suffrage, fundamental rights, the parliamentary system) alongside extractive economic arrangements (land concentration in the immediate post-independence period, the License Raj regulatory framework that favored established industrial interests, the financial system's orientation toward large-scale industrial production over agricultural investment and small-scale enterprise).

The liberalization of the economy that began in 1991 dismantled many of the explicitly extractive regulatory structures of the License Raj but did not fundamentally alter the concentration of economic power at the top of the income distribution. India's Gini coefficient (a measure of income inequality) has increased significantly since 1991. The billionaire class has grown dramatically. Oxfam reports consistently place India among the most unequal societies in the world when wealth (as opposed to income) inequality is measured.

The constitutional framework has been largely inadequate to address this growing economic inequality. The Supreme Court's expansion of Article 21 to include economic rights has been significant but limited in its practical impact. The Directive Principles' program of economic redistribution has not been implemented. The absence of constitutional requirements of transparency and accountability in corporate governance means that the relationship between business interests and political decision-making is largely opaque.

11.3 Populism, the Constitutional Order, and the Challenge of Democratic Decay

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The global literature on democratic backsliding and constitutional erosion, which has expanded dramatically in the period 2014-2026 in response to the rise of authoritarian populism in Hungary, Poland, Turkey, Brazil, the United States, and India among others, offers important analytical tools for understanding the Indian constitutional crisis.

Steven Levitsky and Lucan Way's "competitive authoritarianism" framework and their follow-up work on "how democracies die" identifies several characteristic strategies by which elected governments systematically undermine democratic institutions: judicial packing, the capture of electoral management bodies, the use of legal harassment to suppress political opposition, the erosion of press freedom through regulatory pressure and advertising boycotts, and the gradual normalization of constitutional violations through incremental steps each of which seems manageable but the cumulative effect of which is profound.

Each of these strategies has been documented in the Indian case. The use of investigative agencies against opposition politicians, the regulatory and tax harassment of media outlets that are critical of the government, the supersession of the senior-most judge of the Supreme Court in 1973, the questionable exercise of the Governor's role in government formation, the design and implementation of the electoral bonds scheme, these are individual instances that, taken together, constitute a systematic pattern of institutional erosion.

Tom Ginsburg and Aziz Huq's work on "how to save a constitutional democracy" emphasizes that constitutional backsliding is rarely reversed by constitutional mechanisms alone: it requires a mobilized civil society, an independent and courageous judiciary, a free and vigorous press, and a political opposition that refuses to be co-opted or silenced. The health of India's democracy depends, in the long run, not merely on the text of its Constitution but on the strength and resilience of these social and institutional forces.

CHAPTER TWELVE: CORRUPTION, THE CONSTITUTION, AND THE SYSTEM

12.1 Corruption as a Constitutional Problem

Corruption in India is not merely a moral failing of individuals. It is a systemic phenomenon rooted in the structural features of the constitutional and administrative order. Understanding corruption as a constitutional problem, rather than merely as a problem of individual ethics, is essential for understanding why it persists despite decades of anti-corruption efforts and why the anti-corruption mechanisms that the Constitution and ordinary legislation have created are chronically inadequate.

The structural roots of corruption in India include: the enormous discretionary powers vested in the bureaucracy by the regulatory state, including powers of licensing, land use approval, environmental clearance, and tax administration that create rent-seeking opportunities at every level; the chronic underfunding of public services that creates systematic incentives for informal payments to secure access to services that citizens are constitutionally entitled to receive free; the inadequacy of public service salaries at lower levels, which creates incentives for corruption as a

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supplement to inadequate pay; the opacity of government decision-making that prevents citizens and civil society from monitoring the exercise of discretionary powers; and the political funding system that creates incentives for politicians to extract resources from business interests in exchange for regulatory favors.

The constitutional response to corruption has been fragmented and inadequate. The Right to Information Act, 2005, is the most significant constitutional-level instrument against corruption: by creating a statutory right to access information held by public authorities, it has enabled a remarkable expansion of citizen scrutiny of government decision-making. The RTI Act has been used to expose corruption in everything from the public distribution system to judicial administration to electoral bond financing. But the Act has been weakened by its exclusion of certain categories of information from disclosure, by the government's frequent delays in responding to requests, by the intimidation and even murder of RTI activists in some cases, and by the 2019 amendment that reduced the security of tenure of the Central Information Commission.

The Lokpal and Lokayuktas Act, 2013, which was intended to create an independent anti-corruption ombudsman with real investigative power, was finally implemented after years of delay and public pressure. The Lokpal as actually constituted has been criticized for being weaker than originally envisioned: the selection process has been criticized for lack of independence, the office has been slow to take up major cases, and its investigative powers have been described by practitioners as insufficient for effective anti-corruption work.

The anti-corruption effort is further hampered by the political funding system, in which the financing of political parties is inherently opaque and in which the regulatory authorities that are supposed to investigate corruption are subordinate to governments that have strong interests in preventing independent investigation of their own conduct.

12.2 Electoral Corruption and the Constitutional Framework

The electoral system is the foundation of democratic legitimacy, and the corruption of that system is therefore a corruption of the constitutional order itself. Electoral corruption in India takes many forms: vote-buying, booth capturing, the use of state resources for electoral campaigns, intimidation of voters, manipulation of electoral rolls, and the pervasive influence of money and criminal power in the selection and election of candidates.

The Election Commission of India has made genuine efforts to address some of these problems. The Model Code of Conduct, which restricts government announcements and expenditure in the period between the announcement of elections and the declaration of results, is a significant instrument for limiting the abuse of state resources for electoral purposes. The Commission's power to transfer officials who might be complicit in electoral malpractice has been used to provide some insulation for the administrative machinery from electoral pressures.

But the Election Commission cannot address the fundamental problem: that the cost of competitive electoral politics in India is enormous, that the legal limits on election expenditure

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are widely understood to be inadequate and widely violated, and that the financing of political parties and campaigns draws heavily on undisclosed and often corrupt sources.

The Supreme Court's decision in 2024 to strike down the electoral bonds scheme removed one instrument of potentially corrupt political financing but did not address the underlying problem of the opacity of political financing. A constitutional amendment requiring full transparency in political party finances, mandatory declaration of assets and income by candidates and elected officials, and public financing of elections, would be a significant constitutional reform addressing the structural roots of electoral corruption.

12.3 Judicial Corruption and the Constitutional Dilemma

Judicial corruption is perhaps the most corrosive form of institutional corruption from a constitutional perspective, because the judiciary is the institution charged with upholding the Constitution and with protecting citizens against all other forms of institutional failure. A corrupt judiciary is a system failure at the most fundamental level.

The extent of corruption in the lower judiciary in India is well documented. Multiple surveys of litigants' experiences and of lawyers' practices have found that informal payments to court officials, advocates, and sometimes to judges themselves are a significant feature of the operation of the lower courts, particularly in civil matters and in licensing matters. The Chief Justice of India has himself spoken publicly about the problem of corruption in the lower judiciary.

The problem at the higher judicial levels is more contested but not negligible. The collegium system of judicial appointments, which has no transparent accountability mechanism, has been criticized as creating opportunities for the influence of personal connections, professional rivalries, and informal pressures in judicial appointments. The post-retirement employment of judges in executive and quasi-judicial positions (Tribunals, Commissions, Governors' offices) creates potential conflicts of interest: a judge who hopes for a good post-retirement appointment may have incentives to avoid decisions that would displease the executive.

The constitutional framework does not adequately address judicial corruption. Judges of the Supreme Court and High Courts can only be removed by impeachment, a cumbersome procedure requiring a special majority of both houses of Parliament that has never been successfully completed in Indian constitutional history despite multiple attempts. The absence of any effective mechanism for the accountability of judges has, over time, created an institutional culture of impunity that has not served the integrity of the institution.

CONCLUSION TO PART ONE: THE NECESSITY OF CONSTITUTIONAL COURAGE

This first part of our textbook has attempted a systematic, critical examination of the foundations and structure of the Indian Constitution, drawing on jurisprudential theory, comparative

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constitutional law, empirical evidence from the history of constitutional practice, and the most recent academic and political debates about the state of Indian democracy.

The picture that emerges is not entirely bleak. The Indian Constitution has supported, despite all its inadequacies, a democracy that has survived for more than seventy years in a country of extraordinary diversity and complexity. It has provided institutional frameworks that have enabled peaceful transfers of power, that have protected some categories of citizens from some categories of state abuse, and that have created a space for civil society, legal advocacy, and democratic politics that is real, if constrained.

But the picture is deeply troubled. The Constitution's colonial inheritance has not been adequately overcome. Its structural design tilts power toward the executive, toward the Centre, and toward the already powerful in ways that consistently disadvantage the majority of citizens. Its mechanisms of rights protection are formally admirable and practically inaccessible to those who most need them. Its federal framework is a formal commitment undermined by fiscal reality and gubernatorial politics. Its democratic processes are distorted by money, caste, criminality, and the anti-defection law's elimination of legislative independence. Its foreign policy framework lacks democratic accountability. Its security framework retains colonial-era instruments of suppression that are used against legitimate dissent. Its anti-corruption mechanisms are chronically inadequate to the scale of the problem.

These are not arguments for despair. They are arguments for constitutional courage: the courage to look honestly at the gap between constitutional promise and constitutional reality, to name the structural causes of that gap, and to engage seriously with the question of what constitutional reforms, including potentially fundamental reconstitution, are necessary to make the Indian Republic the genuine democracy that "We, the People of India" were promised.

The subsequent parts of this textbook will build on the foundations laid in this part to examine, in greater depth and detail, the specific areas of constitutional reform that are most urgently needed, the comparative constitutional models and theories that offer guidance for that reform, and the practical political and legal questions involved in moving from constitutional critique to constitutional change.

The constitutional project is not complete. It has never been complete. Every generation of citizens inherits a constitutional order and has both the right and the responsibility to examine it critically, to maintain what is valuable in it, and to reform what is harmful or inadequate. In India in 2026, this responsibility is not merely academic: it is urgent, it is democratic, and it is, in the deepest sense, constitutional.

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End of Part One

Next Part: Part Two will examine in depth the electoral system and its reform, the constitutional framework of political parties, campaign finance, and the relationship between money, power, and democratic representation in India. It will also examine comparative electoral systems and the theoretical and practical case for proportional representation or mixed electoral systems in the Indian context, drawing on the latest research in electoral systems theory and on the specific empirical evidence of electoral distortion in Indian parliamentary and state assembly elections.

About This Textbook

This work is published as an academic contribution to the ongoing constitutional debate in India and as an educational resource for students of law, political science, public administration, and engaged citizenship. It is written in the tradition of critical legal studies: the belief that law is not a neutral set of technical rules but a social practice shaped by power, history, and ideology, and that understanding law requires understanding the social and political forces that produce and maintain it. The analysis is offered not as a final word but as a contribution to the democratic conversation about the kind of constitutional order that India's citizens deserve and can build.

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The author acknowledges that constitutional critique carries political implications and invites political controversy. This is not a reason to avoid it. In a democracy, the Constitution is the supreme law of the people, and the people have the right and the responsibility to examine it critically, to challenge it when it falls short of its own promises, and to demand from their political and legal institutions the constitutional courage that the moment requires.

PART TWO: THE ELECTORAL MACHINERY OF SUBJUGATION

Political Parties, Money, Power, Democratic Betrayal, and the Manufactured Consent of a Republic

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PREFACE TO PART TWO

Part One of this textbook constructed the foundational critique of the Indian Constitution: its colonial DNA, its architecture of concentrated power, its structural federalism that is more fiction than fact, its fundamental rights that operate as privileges of the propertied, and the philosophical contradictions at its core that Ambedkar himself saw clearly and that have never been honestly confronted by those who govern in its name.

Part Two descends from the structural to the operational. It examines how the constitutional order as designed translates into the actual functioning, or rather the systematic malfunctioning, of the democratic republic that the Constitution promised. The focus in this part is on the machinery of political power: on the electoral system that determines who governs, on the political parties that contest for that power, on the money that decides which political parties prevail, on the human beings who are reduced from citizens exercising sovereign power to periodic voters herded into booths to ratify arrangements made by elites in their own interests.

The argument of Part Two, as it develops across its chapters, is this: the electoral and political institutional framework of India, both as constitutionally designed and as it has evolved through practice over seven decades, is not a mechanism for the translation of popular will into governmental action. It is a mechanism for the conversion of mass democratic participation into the legitimation of elite power. It is a system in which citizens vote but do not choose, in which parties compete but do not represent, in which governments are elected but serve interests quite different from those of the majority of the people who elected them.

This is a strong claim. It will be substantiated in detail. It will be supported by evidence from constitutional text, constitutional history, comparative constitutional scholarship, political science research, and the observable facts of political life in India in the period 2014 to 2026. It will be situated within the broader global literature on electoral systems, democratic theory, and the relationship between constitutional design and political outcomes. And it will connect, throughout, to the central theme of the textbook: that these pathologies are not accidental features of an imperfect democracy doing its best, but are structural features of a constitutional order that was designed, from the beginning, in ways that systematically advantaged the few

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against the many, and that has been progressively weaponized against the very citizens it was supposed to protect.

CHAPTER ONE: THE ELECTORAL SYSTEM AND THE MATHEMATICS OF MANUFACTURED MAJORITIES

1.1 The First-Past-The-Post System: A Colonial Gift That Keeps Giving

The electoral system of a democracy is not a neutral technical choice. It is a constitutional choice with profound implications for who is represented, whose preferences are translated into political power, which groups are systematically included and which are systematically excluded, and, ultimately, what kind of democracy a country actually has as opposed to what kind it claims to have. The architects of the Indian Constitution made their electoral system choice quickly, without serious comparative analysis, without substantive democratic deliberation about the alternatives, and without any apparent awareness that the choice would have consequences reaching across decades and generations.

They chose the first-past-the-post (FPTP) system, the system of single-member constituencies in which the candidate with the most votes wins, regardless of whether that candidate commands majority support among the voters of that constituency. They chose it because it was the system they knew. It was the system the British used. It was the system that had been operative in the limited elections of the colonial period. It was the system that the Westminster parliamentary tradition, which the framers had absorbed as the horizon of constitutional possibility, was built around. There is no recorded moment in the Constituent Assembly debates where the framers seriously considered proportional representation, the alternative voting system, or any of the mixed systems that were available as models from other constitutional traditions. The FPTP system was adopted, in effect, by default.

The consequences of this default choice have been staggering, and they have become more severe as the Indian political system has moved from the Congress era of near-single-party dominance to the competitive multi-party environment of the post-1989 period, and then again to the BJP-dominated era of the post-2014 period.

Under FPTP, the relationship between votes cast and seats won is systematically distorted in ways that violate the principle of democratic equality: the idea that each citizen's vote should have equal weight in determining the composition of the legislature. Consider the following facts, drawn from India's recent electoral history.

In the 2019 general elections, the BJP won 37.36 percent of the popular vote and 303 seats out of 543 in the Lok Sabha, giving it a majority of 55.8 percent of seats with 37.36 percent of votes. The Indian National Congress won 19.49 percent of the popular vote and 52 seats, representing 9.57 percent of the total seats. The Bahujan Samaj Party won 3.63 percent of the popular vote and zero seats in the Lok Sabha, while parties with comparable or smaller national vote shares in geographically concentrated regions won multiple seats. The mathematical relationship between

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votes and seats in these results is not merely asymmetric. It is radically unjust. Over 60 percent of the voters who cast ballots in 2019 voted for parties other than the BJP, and yet the BJP commanded an absolute majority in Parliament.

The 2024 general elections produced a result that was more proportionate at the seat level, with the BJP winning 240 seats with approximately 36.5 percent of the popular vote, short of a majority and requiring coalition partners. This outcome was celebrated by many observers as a democratic correction. But the underlying distortions of the FPTP system did not disappear: they were partly obscured by a more competitive result. The INDIA alliance, which won approximately 41 percent of the popular vote collectively, still received a share of seats that did not correspond proportionately to its vote share, because geographic concentration and split votes in individual constituencies produced results that bore no consistent relationship to the will of the majority.

The theoretical critique of FPTP in a multi-party democracy is well established in electoral systems scholarship. Maurice Duverger, the French political scientist whose work on electoral systems remains foundational to the field, argued in what has become known as Duverger's Law that FPTP systems create strong structural pressure toward a two-party system, because votes cast for smaller parties are effectively wasted and rational voters in a FPTP system will tend to vote strategically for one of the two largest parties rather than for their genuine preference. Duverger's Law has been strongly confirmed in the Anglo-American political systems where FPTP prevails: the United States, the United Kingdom, Canada, and Australia all have either two-party systems or systems where two major parties dominate.

India is, in this respect, a striking anomaly. The FPTP system, which Duverger's theory predicts should produce a two-party system, has instead produced a highly fragmented multi-party system with hundreds of parties competing at the national and state levels. The reason for this anomaly is, itself, constitutionally significant: India's multi-party system is not a product of proportional representation, which naturally accommodates multi-party competition. It is a product of the extraordinary diversity of India's social formation: the multiplicity of regional, linguistic, caste, and religious identities that have been mobilized as political constituencies in a multi-dimensional space that resists the two-party polarization that FPTP is supposed to produce.

What India has ended up with is a system that combines the worst features of FPTP with the worst features of multi-party fragmentation: a system in which most votes are "wasted" in the sense that they do not contribute to the election of any representative, in which majority governments are manufactured from minority vote shares, in which geographic concentration of a party's support is systematically rewarded at the expense of parties with more evenly distributed national support, and in which the diversity of Indian political opinion is represented only chaotically and incompletely in the Parliament.

The injustice of this system is not merely formal or mathematical. It has concrete consequences for real people. Every voter who votes for a party that does not win in their constituency is, in a direct sense, disenfranchised: their vote is recorded but counted for nothing. In a country with a vibrant multi-party competition, this means that in any given general election, a substantial majority of voters cast votes that elect nobody. The Election Commission of India does not

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systematically calculate or publish figures for "wasted votes" in this sense, but political scientists who have done the calculation estimate that in recent general elections, between 55 and 70 percent of votes cast in Lok Sabha constituencies were "wasted" in this technical sense.

The demographic consequences of this pattern of waste are not random. They are systematically biased against political minorities, against communities whose population is dispersed across constituencies rather than concentrated in them, and against parties that represent genuinely national rather than regionally concentrated interests. The Muslim community of India, which constitutes approximately 14 percent of the national population and whose political preferences are dispersed across many constituencies, is systematically underrepresented in Parliament relative to its population share because it does not constitute a majority in any significant number of constituencies. The BJP's electoral strategy of Hindu vote consolidation, which concentrates Hindu votes across many constituencies in a way that converts a minority of votes into a majority of seats, is, in part, a rational response to the strategic incentives created by the FPTP system.

1.2 Constituencies, Delimitation, and the Geography of Manufactured Consent

The FPTP system's distortions are compounded by the way in which constituencies are drawn. Delimitation, the process of determining the boundaries of parliamentary and state assembly constituencies, is a constitutional function assigned to the Delimitation Commission, an independent body constituted periodically by the Election Commission of India in accordance with the Delimitation Act. The most recent delimitation of Lok Sabha constituencies was conducted in 2008 and came into effect in 2009, based on the 2001 census.

A constitutional provision that has had profound and largely unacknowledged consequences is Article 82, which mandates the readjustment of Lok Sabha seats after each census. But the 42nd Amendment of 1976, during the Emergency, froze the total number of Lok Sabha seats at 543 until the first census after 2001, and subsequently, a constitutional amendment extended this freeze until after the first census following 2026. This means that the composition of the Lok Sabha has been based, since 2009, on the 2001 census, and will not be updated to reflect demographic changes until delimitation occurs after the 2031 census.

The population of India has not grown evenly across states in the period since the seat allocation was last updated. The Hindi-speaking states of the north, particularly Uttar Pradesh, Bihar, Madhya Pradesh, and Rajasthan, have had higher population growth rates than the southern states of Tamil Nadu, Kerala, Andhra Pradesh, and Karnataka, which have more successfully controlled population growth partly as a result of better social indicators. The consequence of the current seat freeze, combined with population growth differentials, is that southern states are increasingly overrepresented in the Lok Sabha relative to their population, while northern states are correspondingly underrepresented.

But this is the less constitutionally troubling dimension of the delimitation problem. The more troubling dimension is that any new delimitation, when it does occur, will shift seats from the southern states, which have invested in education, health, and social development, to the northern states, which have not. This shift will reduce the political weight of states whose governance has been relatively effective and increase the political weight of states whose

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governance has been significantly less effective. It will also, almost certainly, increase the electoral weight of the BJP's strongest territorial base in the northern states at the expense of the opposition parties' strongest territorial base in the south.

This is not a neutral technicality. It is a constitutional mechanism by which population growth policy, or the lack of it, is converted into political power. States that failed to control population growth will receive more seats in the national Parliament. States that succeeded will lose seats. The constitutional incentive structure is perverse: it rewards failure and punishes success.

The delimitation problem also intersects with the gerrymandering problem, the drawing of constituency boundaries in ways that advantage the party in power. India's Delimitation Commissions have been formally independent and have generally been operated with integrity, but the technical processes of delimitation involve discretionary choices about how to aggregate and disaggregate census units into constituencies, and these choices can have significant partisan consequences. The 2026 delimitation, if it proceeds as scheduled, will be conducted during a period of BJP dominance at the Centre, and the specific choices made by any delimitation commission about constituency boundaries will inevitably be the subject of intense political controversy.

1.3 Electronic Voting Machines: Democracy's Black Box

No discussion of the Indian electoral system in the 2020s can be complete without a serious engagement with the controversy about Electronic Voting Machines (EVMs), which India has used in all elections since 2004. EVMs have been praised by international observers as a technical achievement: they are manufactured domestically, they are relatively simple in design, and they have enabled Indian elections to be conducted more quickly and accurately than the paper ballot system they replaced.

But since approximately 2017, the EVMs have been the subject of increasingly serious allegations of manipulation. Opposition parties, civil society organizations, and a number of retired election officials and technical experts have raised concerns about the possibility that EVMs could be programmed or manipulated to produce fraudulent results. The Election Commission of India has consistently denied these allegations and has maintained that EVMs are tamper-proof. The Supreme Court, in a judgment in April 2024, while declining to order a return to paper ballots, directed the Election Commission to ensure that VVPAT (Voter Verified Paper Audit Trail) slips, which provide a paper record of each vote, be more thoroughly verified.

The EVM controversy is constitutionally significant for reasons that go beyond the technical question of whether the machines can be manipulated. It is significant because the credibility of the electoral process depends not merely on whether it is in fact fair, but on whether it is demonstrably, transparently, and verifiably fair. A democratic system in which significant portions of the population, including organized political parties, have serious doubts about the integrity of the vote-counting process is a system whose democratic legitimacy is compromised regardless of whether those doubts are factually justified.

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The democratic principle of transparency in electoral processes is recognized in international electoral standards, including the United Nations Declaration of Principles for International Election Observation and the guidelines of the International Institute for Democracy and Electoral Assistance (International IDEA). Under these standards, the credibility of an election depends on whether independent observers can verify the accuracy of the count, whether the technical systems used in the election are open to independent expert scrutiny, and whether the procedures for challenging electoral results are fair and accessible.

By these standards, India's EVM system has significant credibility problems. The source code of the EVMs is proprietary and is not available for independent expert audit. The VVPAT verification has been, until the 2024 Supreme Court order, limited to a small sample of booths rather than a comprehensive count. The administrative procedures for accessing EVMs for independent technical examination after elections have been cumbersome and opaque. A democratic system that conducts its most fundamental operation, the counting of votes, in a manner that does not permit full independent verification is not operating at the standard that a constitutional democracy should require.

The Freedom in the World 2026 report, referenced earlier in this textbook, highlights concerns about voter roll manipulation in the 2025 Bihar assembly elections, with opposition allegations about large-scale deletions of voters from electoral rolls, particularly targeting Muslim and minority voters. These specific allegations add to the broader pattern of concerns about the integrity of the electoral process that the constitutional framework has been inadequate to address.

1.4 The "One Nation, One Election" Proposal: A Critique

The proposal for simultaneous elections at the national and state levels, currently known as "One Nation, One Election" (ONOE), has been advanced by the BJP government since at least 2014 and has been the subject of formal recommendations by a High Level Committee chaired by former President Ram Nath Kovind, whose report was submitted in March 2024. The Constitution (129th Amendment) Bill, 2024, introduced in Parliament in December 2024 and referred to a Joint Parliamentary Committee, is the legislative instrument for implementing the proposal.

The stated justifications for ONOE are administrative and economic: the reduction of election costs, the reduction of the period during which the Model Code of Conduct restricts government activity, the relief of security forces and administrative personnel from the burden of managing multiple elections at different times, and the elimination of "election-mode governance" in which governments make populist announcements to attract votes in upcoming state elections rather than pursuing sound long-term policy.

Some of these justifications have real substance. The cost of conducting elections in India is enormous, estimated at over 60,000 crore rupees for the 2019 general election alone, according to the Association for Democratic Reforms. The burden on administrative and security personnel is genuine. The disruption of governance from the model code of conduct is a legitimate concern.

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But the constitutional critiques of ONOE are serious and have been underemphasized in the public debate.

The first critique is about federalism. India's Constitution, for all its quasi-federal deficiencies that we have documented in Part One, does formally distribute governmental power between the Centre and the states, and does formally recognize the states as distinct political communities with their own democratic mandates. The electoral calendar of state assemblies reflects the democratic rhythms of state political communities: it reflects when state governments were formed, when they collapsed, when they needed fresh mandates from their electorates. Forcing all state assemblies to align their electoral calendars with the Lok Sabha's calendar, either by truncating the terms of assemblies that were elected at different times or by extending the terms of assemblies beyond what the voters' mandate contemplated, is a form of federal imposition that subordinates state democratic rhythms to central government preferences.

The critics of ONOE include constitutional scholars such as Subhash Kashyap and Faizan Mustafa who have argued that forcing state assemblies to have their terms adjusted to align with national elections violates the principle of democratic legitimacy: the term of a state assembly derives its legitimacy from the mandate given by the state's voters, and extending or truncating that term without those voters' consent is a democratic violation, not merely an administrative adjustment.

The second critique is about political consequences. ONOE would, in practice, give decisive national-level electoral dynamics a far greater influence over state election results. Research from political science demonstrates that in simultaneous election systems, there is a strong tendency for state election results to mirror national election results: voters in simultaneous elections tend to vote for the same party at both levels, and the "coattail effect" of a popular national leader can sweep parties into state governments that would not have won on state-level issues alone.

In India's specific context, ONOE would significantly benefit the BJP, whose dominant national presence and charismatic national leadership would, in simultaneous elections, be translated into far greater state-level electoral dominance than the BJP currently achieves in state elections held independently. This is not merely a matter of partisan advantage in a particular cycle: it is a structural distortion of democratic federalism that would reduce the effective autonomy of state-level democratic competition.

The third critique is about the anti-defection law and mid-term elections. The ONOE proposal raises a constitutional paradox: what happens if a state government or the national government falls mid-term through a vote of no confidence? Under the ONOE framework, a new election would need to be held within a specified period, but the proposal has been unclear about the constitutional mechanisms for managing mid-term vacua in a synchronized electoral system. If the solution is to impose President's Rule at the state level whenever a state government falls mid-term, pending the next synchronized election, then ONOE would significantly expand the scope and frequency of central government imposition of rule over states, dramatically worsening the federalism problem that is already one of the most serious structural deficiencies of the Indian Constitution.

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The fourth critique connects to the deep issue of democratic legitimacy. The ONOE proposal requires amendments to at least 18 provisions of the Constitution. Many of these amendments affect the relationship between the Centre and the states. Article 368 of the Constitution requires that certain constitutional amendments, including those affecting state representation in Parliament, must be ratified by the legislatures of at least half the states. But the ONOE proposal, as currently formulated, seeks to amend provisions affecting state assemblies' terms without making it clear that these amendments require state ratification. This ambiguity about the constitutional amendment procedure for ONOE reflects a broader pattern: the tendency of the current government to treat federalism as a procedural inconvenience rather than a constitutional commitment.

The Law Commission of India, as noted in the search results, has endorsed ONOE's constitutional legitimacy, finding that it does not violate the basic structure of the Constitution. This endorsement from an institution that is not independent of the government that appointed it is not the definitive constitutional verdict that its proponents have claimed. The real constitutional test will come before the Supreme Court, where challenges to ONOE's constitutional validity are inevitable if the bill is enacted.

CHAPTER TWO: THE CONSTITUTIONAL CRISIS OF POLITICAL PARTIES

2.1 The Constitutional Silence on Political Parties: A Structural Disaster

The most consequential constitutional silence in the Indian constitutional order, as noted in Part One, is the silence about political parties. This silence has enabled an entire ecosystem of democratic pathology: parties that are dynasty-controlled, parties that are criminal enterprises, parties that are vehicles for the conversion of social identity into political power without any program or principle beyond group advancement, parties that receive enormous sums of money from interests they are never required to disclose, parties that select their candidates through opaque internal processes over which neither their members nor the public have any meaningful control.

The constitutional vacuum regarding political parties is not simply an oversight. It reflects a deeper conceptual failure of the framers of the Constitution: the failure to recognize that in a representative democracy, political parties are constitutional organs, not merely private associations. Political parties are the mechanisms through which sovereign power is organized and exercised. They determine who stands for election, they enforce legislative discipline through the anti-defection law, they organize governmental majorities, they control the selection of ministers, and they exercise, through their leadership, an influence over governmental decision-making that is far more determinative than the formal constitutional provisions about executive power.

In this sense, a political party in India is not merely a private organization that happens to engage in democratic politics. It is a quasi-constitutional institution whose internal structure, funding, and decision-making processes directly determine the character of the democratic order. The

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complete absence of constitutional regulation of this quasi-constitutional institution is a structural deficiency of the first order.

The political parties scholar E.E. Schattschneider famously wrote in 1942 that "democracy is unthinkable save in terms of parties." If parties are the essential machinery of democracy, then the constitutional order that governs a democracy must address the question of how parties are organized, who controls them, how they are financed, and how they are held accountable. The failure to do so is not a neutral abstention: it is a positive endorsement of whatever practices parties choose to adopt, however harmful those practices may be to democratic quality.

2.2 The Dynasty Problem: Constitutional Democracy as Hereditary Privilege

The dynastic character of Indian political parties is a feature that distinguishes Indian democracy almost uniquely among the world's major democracies. In established Western democracies, while political families exist and family connections can confer advantage, the formal leadership of major national parties is determined through competitive internal elections or leadership contests that, however imperfect, involve a degree of meritocratic competition.

In India, the leadership of the majority of significant political parties, at both the national and state levels, is determined not by merit, not by internal democratic competition, but by family succession. The phenomenon is so widespread and so deeply embedded that it has become normalized: it is treated as a feature of Indian politics rather than as an abuse of democratic principles.

The Congress party's dynastic character is the most visible and most extensively documented. The Nehru-Gandhi family has provided every Congress prime minister who has served more than one year in office: Jawaharlal Nehru (1947-1964), Indira Gandhi (1966-1977, 1980-1984), Rajiv Gandhi (1984-1989), and Manmohan Singh (2004-2014), who was constitutionally the Prime Minister but was widely understood to govern under the political authority of Sonia Gandhi and subsequently Rahul Gandhi. The Congress party's two most recent presidents before the 2022 election of Mallikarjun Kharge were Sonia Gandhi (1998-2017, 2019-2022) and Rahul Gandhi (2017-2019), mother and son. The persistence of the Nehru-Gandhi family's control over the party, despite repeated electoral failures and despite the party's formal commitment to internal democracy, is a case study in how democratic forms can be maintained while democratic substance is systematically subordinated to dynastic interest.

But the Congress is far from the only offender. The Samajwadi Party is controlled by the Yadav family: its founder Mulayam Singh Yadav was succeeded by his son Akhilesh Yadav. The Rashtriya Janata Dal is controlled by Lalu Prasad Yadav and is being positioned for succession to his children. The Dravida Munnetra Kazhagam was founded by M. Karunanidhi and has been led by his son M.K. Stalin since 2018. The Indian National Lok Dal in Haryana, the Shiromani Akali Dal in Punjab, the National Conference in Jammu and Kashmir, the Peoples Democratic Party in Jammu and Kashmir, the Trinamool Congress in West Bengal (where Mamata Banerjee's nephew Abhishek Banerjee has been positioned as heir apparent), the YSR Congress Party in Andhra Pradesh, the Biju Janata Dal in Odisha, the Telugu Desam Party: all are either

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family dynasties or party-founder-controlled organizations with no credible internal democratic process for leadership selection.

The BJP presents itself as an exception to the dynasty model, pointing to its origin in the cadre-based RSS organizational network and to its formal institutional mechanisms for leadership selection. But the BJP's actual functioning under Narendra Modi since 2014 has been characterized by a degree of personalist centralization that political scientists who study these systems recognize as a form of one-man control, even if that control is exercised through an organizational structure rather than through family succession. The relationship between Modi's personal authority and the formal constitutional and party structures is such that meaningful decisions about party direction, candidate selection, and governmental priority are effectively made by one person and his immediate circle.

The constitutional consequences of the dynasty problem are severe. When parties are family businesses, candidate selection is controlled by family interests, not by merit or popular preference. When parties are family businesses, the career interests of party members are entirely subordinated to the interests of the family leadership, creating an organizational culture of sycophancy and servility that produces governments staffed by loyalists rather than competent administrators. When parties are family businesses, the children and relatives of political leaders receive political opportunities regardless of their qualifications, creating a hereditary political class that is as closed and self-reproducing as any aristocracy.

The constitutional remedy is not complex in theory, even if it is politically difficult. Constitutional provisions requiring political parties to have genuinely democratic internal structures, competitive and transparent leadership selection processes, membership rolls that are open to public scrutiny, and regular internal elections that are independently audited, would address the dynasty problem directly. These constitutional requirements exist in the party law frameworks of several European democracies. Germany's Basic Law, for example, requires political parties to conform to democratic principles in their internal organization. Spain's Law on Political Parties similarly requires internal democracy. There is no constitutional or theoretical reason why India could not adopt comparable requirements.

2.3 Criminal Politics: When the Legislature Becomes the Dock

One of the most extraordinary features of Indian democratic politics, and one that speaks most directly to the gap between constitutional aspiration and political reality, is the prevalence of criminal elements in the political system. The Association for Democratic Reforms (ADR), which systematically analyzes the affidavits that candidates are required to submit under Supreme Court orders listing their criminal records, has documented the scale of criminal politics in India with meticulous and damning precision.

In the 2024 general elections, ADR found that 46 percent of winning Members of Parliament had criminal charges declared against them. Of these, 31 percent had cases involving serious charges: murder, attempt to murder, kidnapping, crimes against women, and other offenses of similar gravity. This was not an aberration. It continued a pattern that ADR has documented consistently across multiple election cycles and at all levels of government.

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The constitutional response to this problem has been inadequate and in significant respects made things worse. The Supreme Court, in a series of judgments, has required the public disclosure of candidates' criminal records through the affidavit system that ADR monitors. This requirement for disclosure was a significant achievement: it at least gives voters access to information about the criminal backgrounds of candidates. But disclosure has not prevented the election of persons with serious criminal records, because the criminal element in politics is not simply a product of voters' ignorance. It is a product of the systemic incentives that make criminal politicians valuable to parties and to voters in particular contexts.

Criminal politicians are valuable to parties for several reasons. They can finance their own campaigns, reducing the party's financial burden. They can mobilize voters through the combination of community patronage and intimidation. They have the organizational muscle to manage the on-the-ground logistics of an election campaign. They are, in areas where state capacity is weak and communities depend on informal enforcement of economic arrangements, the effective local government that the constitutional government has failed to provide.

Criminal politicians are valuable to some voters because in communities where the formal legal system is inaccessible, where the police are corrupt or hostile, where the courts are slow and expensive, the criminal politician with muscle and community connections may be the only available mechanism for dispute resolution, for protection against external threats, and for access to government resources. Milan Vaishnav's work on criminal politicians in India, particularly his book "When Crime Pays" (2017), documents this dynamic with careful empirical research and concludes that the criminalization of politics is not a pathological aberration of Indian democracy but a rational response to the failures of the constitutional state to provide the services that citizens need.

The constitutional remedy for criminal politics is contested. The Supreme Court has held, in Lily Thomas v. Union of India (2013), that sitting legislators who are convicted of offenses carrying sentences of two years or more are immediately disqualified from holding office, without the protection that Section 8(4) of the Representation of the People Act had previously provided by allowing convicted legislators to continue in office while their appeals were pending. This judgment was a significant step toward accountability, but it has not prevented the election of persons with pending (unconvicted) criminal charges, and it has incentivized the manipulation of criminal justice processes by which politically connected defendants are able to ensure that their trials proceed slowly enough that they are never convicted while they remain in political office.

A more fundamental remedy would require constitutional reform: a constitutional provision that disqualifies from candidacy any person against whom charges have been framed by a competent court in cases involving specified serious offenses, or that requires the expedited trial of cases involving sitting or candidate legislators. Such provisions raise legitimate due process concerns (the disqualification of uncharged individuals on the basis of allegations) and practical concerns (who decides whether the charges are framed by a court acting in good faith rather than at the direction of political opponents?), but these concerns are manageable through careful constitutional drafting, and the alternative of allowing the continued criminalization of politics imposes costs on democratic quality that are far higher than the costs of the risks involved in the remedy.

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2.4 The Anti-Defection Law: The Death of Legislative Conscience

The Tenth Schedule of the Indian Constitution, added by the Fifty-Second Amendment in 1985, establishes the anti-defection law that disqualifies from membership of Parliament or a state legislature any member who "voluntarily gives up membership of such political party" or who "votes or abstains from voting in such House contrary to any direction issued by the political party to which he belongs."

The anti-defection law was enacted in response to a real problem: the "aaya ram, gaya ram" phenomenon of the late 1960s and 1970s in which legislators switched parties with flagrant opportunism, destabilizing governments and reducing electoral mandates to a joke. The instability of coalition governments in this period, driven by constant floor-crossing for personal advantage, was a genuine democratic pathology that the Tenth Schedule was designed to address.

But the cure has been worse than the disease in several critical respects, and the constitutional analysis of the anti-defection law is one of the clearest examples of how the Indian Constitution's amendment process has been used to solve a short-term political problem while creating a long-term constitutional one.

The anti-defection law, as currently framed, essentially makes every Member of Parliament a delegate of the party leadership rather than a representative of constituents. A member who votes against the party's direction on any matter, regardless of the merits of the issue, regardless of the preferences of the member's own constituents, and regardless of the member's own considered judgment, is liable to disqualification. The party leadership's direction is effectively converted into an irresistible legal command: vote our way or lose your seat.

This conversion of representatives into delegates is constitutionally incompatible with the theory of representative democracy that underlies the parliamentary system. The constitutional theory of representative democracy, going back to Edmund Burke's famous speech to the electors of Bristol in 1774 and elaborated by constitutional scholars from Erskine May to A.V. Dicey, is that a member of Parliament is not a delegate of the constituency who mechanically transmits its preferences, but a representative who exercises independent judgment in the service of the constituency's best interests and of the public good. The member is accountable to the constituency through the mechanism of election, but between elections, the member must be free to exercise legislative conscience.

The anti-defection law eliminates legislative conscience entirely for members of recognized parties. A member cannot vote differently from the party on any matter without risking disqualification. This means that parliamentary debate is essentially theatrical: the outcome of any vote in which party directions have been issued is determined by the number of seats held by each party, not by the arguments made in debate, not by evidence presented to the house, and not by the considered judgment of individual members. Parliament becomes not a deliberative institution but a counting house in which the result of the count is known before the debate begins.

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The consequences for the accountability of the executive to Parliament are severe. In a parliamentary system, the primary mechanism of executive accountability is the legislature's power to question, scrutinize, and if necessary remove the government through a vote of no confidence or through the defeat of government legislation. But if the anti-defection law makes it effectively impossible for government backbenchers to vote against their party's directions (which are, of course, the government's directions), then parliamentary accountability is reduced to the formal possibility of a no-confidence motion, which can only succeed if an alternative parliamentary majority exists, and the routine scrutiny and criticism that is supposed to be the parliament's daily business is reduced to ineffectual complaint.

The deeper constitutional problem with the anti-defection law is that it inverts the constitutional relationship between voters, representatives, and parties. The constitutional theory of parliamentary democracy is that voters elect representatives, who form parties to organize legislative business and to support or oppose governments, but who remain fundamentally accountable to their voters. The anti-defection law converts this relationship: party leaders now have legally enforceable authority over their members' votes, and voters who disagree with the party's direction have no constitutional mechanism for expressing that disagreement between elections.

The Tenth Schedule has a provision allowing a "split" in a party of at least two-thirds of the party's members to join another party without incurring disqualification. The Ninety-First Amendment of 2003 eliminated the split provision entirely, leaving only "merger" (which requires two-thirds of the original party's members to merge with another party) as an exception to disqualification. This amendment, whatever its intentions, further concentrated power in party leaderships by eliminating even the limited constitutional space for legislative independence that the split provision had created.

The Supreme Court has held, in Kihoto Hollohan v. Zachillhu (1992), that the Tenth Schedule is constitutionally valid and does not violate the rights of free speech or the basic structure of the Constitution. The court's reasoning, which emphasized the importance of party discipline in maintaining governmental stability, has been criticized by constitutional scholars as inadequately weighing the costs to democratic accountability that the Tenth Schedule imposes. The Kihoto Hollohan decision deserves more sustained critical examination than it has received.

CHAPTER THREE: THE MONEY POWER AND THE CONSTITUTIONAL CORRUPTION OF DEMOCRACY

3.1 Money, Politics, and the Structural Corruption of Representation

The relationship between money and political power is one of the oldest problems in democratic theory, and it has been theorized from Aristotle's concern about plutocracy in his Politics through Madison's anxiety about faction in Federalist No. 10 through the modern empirical political science of campaign finance and its relationship to legislative outcomes. The core concern is simple and devastating in its democratic implications: if political campaigns require money, and

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if money is held unequally by different interests in society, then the political process will be systematically biased toward the interests of those who can provide money, at the expense of the interests of those who cannot.

In India, this concern is not merely theoretical. It is a lived constitutional reality. The cost of Indian elections has increased dramatically over the decades. The estimated total cost of the 2019 general election was approximately 60,000 crore rupees (approximately 8.6 billion US dollars at the time), making it the most expensive election in the world by absolute expenditure and one of the most expensive by expenditure per voter. The 2024 elections were estimated to have cost even more. These costs vastly exceed the legally prescribed limits on candidate expenditure, which are set at 70 to 95 lakh rupees for Lok Sabha constituencies depending on the state. The gap between actual expenditure and legal limits is bridged by black money and by the creative accounting of election campaigns that systematically understate actual spending.

The sources of this money are multiple: business interests that expect policy returns on their political investments; contractors who depend on government contracts; industries operating in sectors heavily regulated by government; criminal enterprises that use political investment to purchase protection; the foreign funding of political activities through channels that the law does not adequately regulate; and, most recently, the electoral bonds scheme that the Supreme Court struck down in February 2024.

The electoral bonds scheme, introduced in 2018, was perhaps the most sophisticated and most consequential mechanism for the structurally corrupt financing of Indian politics in the country's modern history. Under the scheme, any person or company could purchase electoral bonds of specified denominations from the State Bank of India, and these bonds could then be donated to any political party registered with the Election Commission. The bonds were structured to be anonymous: the identity of the donor was known to the State Bank of India and, through the bank, to the government, but was not disclosed to the public, to the Election Commission, or to Parliament.

The electoral bonds scheme was presented by the government as a mechanism for "cleaning up" political funding by channeling it through formal banking channels. But the transparency pretense was an elaborate fiction. The scheme combined banking-channel formality with donor anonymity, creating a system in which large corporate interests could make massive political donations that were invisible to the public, to the opposition, and to civil society, but entirely visible to the government in power through its access to the State Bank of India's records.

The Supreme Court's judgment in Association for Democratic Reforms v. Union of India (2024) struck down the electoral bonds scheme on constitutional grounds, holding that it violated the voters' right to information about political funding, that information about political financing was essential to informed voting, that the State Bank of India's role as the sole authorized seller of bonds created an inherent conflict of interest and potential for government surveillance of donors, and that the anonymity of the scheme was inconsistent with the constitutional requirements of electoral transparency.

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The court's analysis connected to first principles of democratic theory: the legitimate authority of government derives from the will of the people, informed voting is essential to popular sovereignty, and any mechanism that conceals from voters information about who is financing which political parties is a mechanism that systematically undermines the epistemic basis of democratic choice.

The data about electoral bonds that emerged from the Supreme Court proceedings and from the subsequently ordered disclosure of bond data revealed a pattern that was, to those paying attention, predictable in its broad outlines but staggering in its specific detail. The entities that purchased the largest quantities of electoral bonds were companies operating in heavily regulated sectors: mining, pharmaceuticals, infrastructure, power, and real estate. The relationship between electoral bond purchases and the receipt of government licenses, contracts, and regulatory favors was documented by investigative journalists in forensic detail. The bond data showed that many of the largest donors had also received government contracts of similar or greater value from the state or central governments of the party to which they donated. This is not proof of corruption in any individual case, but the pattern is consistent with a system in which political donations function as the consideration for regulatory benefits, a form of structural corruption that the electoral bonds scheme facilitated and concealed.

The striking down of electoral bonds was a significant constitutional achievement. But the underlying problem, the opacity of political financing and the relationship between large-scale political donations and governmental decision-making, has not been resolved. Political parties continue to receive large donations through other channels, and the constitutional and statutory framework for political finance transparency remains inadequate.

3.2 The Constitutional Framework of Electoral Finance: Gaps and Failures

The legal framework for electoral finance in India consists of the Representation of the People Act, 1951 (RPA), as amended, provisions of the Income Tax Act, the Companies Act, and the rules made thereunder. The constitutional provision is spare: Article 324 vests superintendence, direction, and control of elections in the Election Commission, but provides no specific mandate regarding election finance. The comprehensive regulation of election finance has been left to parliamentary legislation and to court-developed doctrine.

The RPA limits candidate expenditure (not party expenditure) for Lok Sabha elections to between 70 and 95 lakh rupees, depending on the state. The Companies Act, as amended, initially required companies to disclose political donations of over 20,000 rupees in their annual reports, but this requirement was effectively nullified for electoral bonds by the anonymity provisions of the bonds scheme. The Income Tax Act provides tax exemptions for political contributions, creating a tax subsidy for donors that is not conditioned on any disclosure requirement.

The constitutional gap in this framework is the absence of any requirement of comprehensive disclosure of political party income and expenditure. Political parties are required by Section 29C of the RPA to submit statements of contributions received from companies and individuals above a specified threshold, but these requirements have been routinely flouted or gamed, and

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the enforcement by the Election Commission has been minimal. A party that fails to submit accurate disclosure statements does not lose its registration, its tax exemptions, or any other significant legal privilege. The penalty for non-disclosure is essentially symbolic.

The constitutional comparison is instructive. Germany's Political Parties Act requires comprehensive annual financial reports from all recognized political parties, with detailed disclosure of income sources and expenditures. Donations above 10,000 euros must be publicly reported. The public financing of parties is substantial (approximately half of party revenues), and it is conditioned on electoral performance and on compliance with transparency requirements. The system is administered by the President of the Bundestag and is subject to judicial review.

The United States, whose campaign finance law is far more problematic than Germany's because of its treatment of political spending as a form of constitutionally protected speech (Citizens United v. Federal Election Commission, 2010), nonetheless requires comprehensive and timely public disclosure of campaign contributions and expenditures through the Federal Election Commission, with genuine enforcement mechanisms including criminal penalties for deliberate violations.

India has neither the comprehensive public financing of parties of the German model nor the comprehensive disclosure requirements of either model. What it has is a patchwork of formal requirements and substantive nullities that create the appearance of regulation while enabling the actual practice of opaque, potentially corrupt, and certainly democratically distorting large-scale political financing.

3.3 Corporate Power and Political Capture: Structural Corruption as a Constitutional Problem

The relationship between corporate interests and governmental decision-making in India is a relationship in which constitutional accountability has systematically failed. The constitutional framework does not prevent, does not require disclosure of, and does not prohibit the effective purchase of political influence through the mechanism of large-scale political donations combined with subsequent governmental decision-making favorable to the donors.

The concept of structural corruption, which the political philosopher Dennis Thompson developed in his influential work on political ethics, is useful here. Thompson distinguishes between individual corruption (in which particular officials accept bribes for particular decisions) and structural corruption (in which the institutional arrangements of a political system systematically create incentives and opportunities for decisions favorable to financial interests, without any specific illegal transaction occurring). Individual corruption is a crime. Structural corruption is a constitutional pathology.

India's system of political financing creates structural corruption at an industrial scale. Businesses that make large political donations to the ruling party have created, through those donations, a relationship of financial dependency that creates reasonable expectations of favorable regulatory treatment. Whether or not any specific agreement is reached, any specific

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bribe is paid, the structural relationship between donor and recipient creates incentives for governmental decisions that benefit the donor. And the secrecy of the donation, enabled by the electoral bonds scheme and other mechanisms of opaque funding, means that neither the public nor the courts can scrutinize the relationship.

The Adani controversy, which has been a persistent feature of Indian political discourse since the 2023 Hindenburg Research report and the subsequent reports by the Organized Crime and Corruption Reporting Project (OCCRP) and the Financial Times, illustrates the structural corruption problem with particular clarity. The allegations about the Adani Group, its relationships with governmental decision-makers, its access to airports, ports, and energy infrastructure contracts, and the questions about regulatory treatment that may be relevant to the value of these contracts, cannot be adjudicated in this textbook. But the constitutional point is clear: in a system with adequate transparency about political financing and adequate independence in regulatory decision-making, these concerns would either be dispelled by clear evidence of arm's-length dealing, or confirmed by evidence of improper relationships, and the constitutional mechanisms of accountability would respond accordingly. In India's actual system, the opacity of political financing and the compromised independence of regulatory institutions means that the concerns remain unresolved and the democratic accountability that the Constitution promised remains unavailable.

CHAPTER FOUR: HOW THE CONSTITUTIONAL ORDER MAKES THE POLITICAL SYSTEM NATIONALIST, DICTATORIAL, AND UNDEMOCRATIC

4.1 The Structural Facilitation of Majoritarian Authoritarianism

The constitutional architecture described in this textbook and in Part One does not inevitably produce majoritarian authoritarianism: there have been periods in Indian democratic history when the constitutional order's checks and balances functioned reasonably effectively, when different parties held power at the Centre and in the states, when the judiciary maintained meaningful independence, and when the press operated with genuine freedom. These periods demonstrate that the constitutional order is not deterministically authoritarian: it contains resources for democratic self-correction as well as structural vulnerabilities to authoritarian capture.

But the constitutional vulnerabilities are real, systematic, and increasingly exploited. The combination of the FPTP system, which converts minority vote shares into majority parliamentary seats; the anti-defection law, which eliminates legislative independence; the governor's office, which can be used to destabilize opposition state governments; the emergency powers framework, which remains available for misuse despite the improvements of the Forty-Fourth Amendment; the preventive detention and security legislation framework, which provides expansive tools for the detention of political opponents; the regulatory powers over media, banking, and the economy, which can be used to intimidate critics and reward allies; and the judiciary's demonstrated tendency to defer to executive authority in politically sensitive cases,

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these elements together constitute a constitutional architecture that is, in the hands of a determined and skilled authoritarian, a remarkably effective instrument of domination.

The contemporary Indian political system's trajectory toward what scholars are increasingly calling "electoral autocracy" is not, in this analysis, a deviation from the constitution. It is the constitutional order operating in accordance with its structural logic, exploited by political actors who understand that logic better than the Constitution's defenders have been willing to acknowledge.

Tarunabh Khaitan's influential 2020 paper "Killing a Constitution with a Thousand Cuts" identifies a pattern of "stealth authoritarianism" in India: the systematic use of individually legal or borderline-legal actions, none of which individually constitutes a clear constitutional violation, but whose cumulative effect is the systematic hollowing out of constitutional democracy. This analysis is consistent with the comparative literature on democratic backsliding by Levitsky and Ziblatt and with the V-Dem Institute's data on the specific dimensions of democratic quality that have declined most severely in India since 2014.

The V-Dem Institute's Democracy Report 2025, assessing elections in the period 2024-2025, maintains India's classification as an "electoral autocracy," noting that while elections continue to be held and formal democratic procedures are maintained, the conditions necessary for elections to function as genuine mechanisms of democratic accountability, including freedom of expression, freedom of association, judicial independence, and an equal playing field for opposition parties, have been significantly compromised.

The Freedom in the World 2026 report, as noted above, maintains India's "Partly Free" classification and highlights specific concerns including voter roll manipulation, the use of state resources for electoral advantage, and restrictions on civil society and press freedom. These concerns are not abstract: they represent the concrete experience of millions of citizens who are subject to a political system that presents the forms of democracy while progressively hollowing out its substance.

4.2 The Prime Ministerial Autocracy and Its Constitutional Enablers

The concentration of executive power in the Prime Minister that characterizes the current Indian political system is not simply a product of the BJP's political strategy or Narendra Modi's personal ambitions. It is the product of a constitutional architecture that was always vulnerable to this kind of concentration and that has been progressively modified, through practice and through constitutional amendment, in ways that have systematically increased this vulnerability.

Consider the constitutional enablers of Prime Ministerial dominance in the current system.

The anti-defection law, discussed above, eliminates the most important parliamentary mechanism for disciplining a dominant Prime Minister: the ability of backbench government members to threaten defection or to vote against government positions on matters of principle. Under the anti-defection law, a Prime Minister who controls the party organization effectively controls every vote of every member of the governing party in Parliament. The legislature's

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checking function on the executive is reduced to the formal possibility of a no-confidence motion that, in a majority government, is structurally impossible to succeed.

The electoral bonds scheme, before it was struck down, gave the party in power a structural financial advantage over opposition parties through its control of access to the State Bank of India, which was the sole authorized issuer of bonds. Donors wanting to purchase electoral bonds knew that the government had access to bond purchase records, and this knowledge created incentives to donate to the ruling party and disincentives to donate to opposition parties. The financial asymmetry between the ruling party and the opposition, already severe because of the ruling party's advantages in controlling state resources, was further exacerbated by the bonds scheme.

The CBI, Enforcement Directorate, and other central investigative agencies, while formally independent, operate under the administrative direction of the executive. The deployment of these agencies against opposition politicians, activists, and critics has been extensively documented. The Supreme Court's characterization of the CBI as a "caged parrot" in 2013 was made by a court examining CBI conduct under a Congress government: the problem predates the current government and reflects a structural constitutional deficiency rather than a partisan one. But the scale and systematic character of the use of investigative agencies for political purposes has, by the documentation of multiple independent observers, intensified under the current government.

The Governor's office, as analyzed in Part One, has been used systematically to destabilize opposition state governments: the cases of Maharashtra, Kerala, Tamil Nadu, and Telangana illustrate a consistent pattern. The constitutional remedy proposed in Part One, a fixed non-removable tenure for Governors with appointment by a genuinely independent process, would require a constitutional amendment that the party currently most benefiting from the abuse of the Governor's office has no incentive to support.

The media environment, which is essential to democratic accountability, has been fundamentally transformed through regulatory pressure, advertising boycotts of critical outlets, and the concentration of media ownership in the hands of businesses with political relationships favorable to the ruling party. The Reporters Without Borders World Press Freedom Index placed India at 151 out of 180 countries in 2024, a dramatic decline from earlier rankings. The constitutional guarantee of press freedom under Article 19(1)(a) has proven inadequate to protect media independence against the combination of economic pressure, regulatory harassment, and the chilling effect of UAPA and sedition prosecutions.

4.3 The Weaponization of Law Against the Citizen: UAPA, Sedition, and the Criminalization of Dissent

The use of law as a weapon against citizens, rather than as a shield for their rights, is one of the most persistent and most damaging features of the Indian constitutional order, and one whose roots go back, as we have argued, to the colonial constitutional inheritance.

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The Unlawful Activities (Prevention) Act, as amended in 2019, is the most powerful and most abused instrument in this arsenal. The 2019 amendments extended the Act's designation powers to cover individuals, not merely organizations, allowing the central government to designate any individual as a "terrorist" without judicial oversight at the designation stage. Once designated, the individual's property can be attached, their travel can be restricted, and the mere possession of certain materials or association with certain persons can become a criminal offense.

The Act reverses the standard burden of proof in bail applications: under Section 43D(5) of UAPA, bail cannot be granted if the court is satisfied that there are "reasonable grounds for believing" that the accusation is "prima facie true." This reversal, combined with the vagueness of terrorism-related offenses under the Act, effectively means that a person charged under UAPA will remain in custody for years pending trial, because courts will rarely exercise the discretion to grant bail when the government presents any plausible case and when the default position is denial of bail.

The Bhima Koregaon case has become the symbol of the weaponization of the UAPA against civil society. The defendants, charged with Maoist links based on digital evidence that forensic experts found was planted by malware on their computers, have been held in pre-trial custody for periods exceeding five years. Father Stan Swamy, a Jesuit priest and tribal rights activist who was among the accused, died in custody in 2021 at the age of 83, before his trial could begin. He had Parkinson's disease and had been denied adequate medical care. His death in custody provoked international condemnation and domestic outrage, but no formal accountability.

The sedition law under Section 124A of the Indian Penal Code (now Section 150 of the Bharatiya Nyaya Sanhita, 2023), which criminalizes speech or writing that "brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the government," has been used consistently against journalists, activists, farmers' union leaders, student protesters, and anyone deemed to have expressed insufficiently deferential views about the government. The Supreme Court, in S.G. Vombatkere v. Union of India (2022), stayed the application of Section 124A pending reconsideration, following the Law Commission's 2023 recommendation for the law's repeal. But the Bharatiya Nyaya Sanhita of 2023 replaced the explicit sedition provision with Section 150, which critics argue preserves the substance of sedition law under different terminology: the new provision criminalizes "acts endangering sovereignty, unity and integrity of India," a definition that is potentially broader and even more susceptible to political misuse than the original sedition provision.

The pattern of using legal instruments against critics and opponents is documented in the data of the National Crime Records Bureau, in the reports of independent human rights organizations including Human Rights Watch and Amnesty International, and in the systematic analysis of researchers including Rohit De, Oishik Sircar, and the team at the Internet Freedom Foundation. The picture that emerges is not of a constitutional order using law to protect citizens, but of a constitutional order increasingly using law to protect the state against citizens.

This inversion of the relationship between law and citizen, between the constitutional order and the people it was supposed to serve, is the deepest constitutional crisis of the current moment. It reaches back to the colonial constitutional inheritance, in which law was always primarily an

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instrument of governance and control rather than an instrument of rights. And it demonstrates, with terrible clarity, why the constitutional order requires not merely amendment but fundamental reconstitution.

CHAPTER FIVE: SOCIETY DESTROYED FROM ABOVE: HOW THE CONSTITUTIONAL ORDER VICTIMIZES ITS CITIZENS

5.1 Economic Inequality, Constitutional Promise, and Structural Failure

The constitutional promise of social and economic justice, enshrined in the Preamble's commitment to "justice, social, economic and political" and elaborated in the Directive Principles of State Policy, has not been delivered in the seven decades of the Republic. The gap between constitutional aspiration and economic reality is one of the defining facts of Indian political life, and understanding it requires both empirical documentation and constitutional analysis.

Oxfam India's inequality report for 2025, consistent with the pattern of its previous annual reports, documents a society of extraordinary and growing inequality. The wealthiest one percent of Indians own more than 40 percent of the country's wealth. The wealthiest ten percent own approximately 80 percent. The bottom fifty percent, by contrast, owns approximately three percent of the country's wealth. India's billionaire class has grown dramatically since the liberalization of 1991, with the number of dollar billionaires increasing from approximately nine in 1991 to over one hundred and sixty in 2024, representing total wealth that dwarfs the entire annual expenditure of the Union government on health, education, and social protection combined.

The constitutional analysis of this inequality requires engagement with two related questions: first, is this inequality constitutionally impermissible, and second, does the constitutional framework contribute to the production and perpetuation of this inequality?

On the first question: the Directive Principles, if they could be judicially enforced, would create a constitutional obligation to prevent the concentration of wealth "to the common detriment" (Article 39(c)) and to secure "an adequate means of livelihood" for all citizens (Article 39(a)). These provisions, if given the force of law that the framers deliberately denied them, would constitute a robust constitutional mandate for redistribution. The judiciary has, through the expansion of Article 21, created some limited judicial enforceability of economic rights, particularly the right to livelihood and the right to food. But these judicial developments, important as they are, represent a partial and inadequate substitution for the comprehensive justiciable economic rights framework that the Constitution deliberately declined to create.

On the second question: the constitutional framework contributes to the production of economic inequality in several ways. The fiscal federal structure, which assigns revenue-raising powers to the Centre while assigning expenditure obligations to the states, results in systematic underfunding of the social services (health, education, water, sanitation, rural roads) that are

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most important to the welfare of the poor and that are primarily state responsibilities. The inadequacy of social service investment is not merely a product of insufficient national wealth: India's public health expenditure as a percentage of GDP is among the lowest in the world, below that of many much poorer countries, reflecting a constitutional and political choice about priorities rather than an absolute resource constraint.

The property rights framework, which was contested so extensively in the early constitutional history (documented in Part One), has resulted in a legal regime that is simultaneously inadequate to protect the poor against dispossession by the state (because the removal of the fundamental right to property eliminated constitutional compensation requirements) and inadequate to prevent the accumulation of excessive wealth at the top (because the Directive Principles' redistributive mandates are non-justiciable). The law of land acquisition, as embodied in the Land Acquisition Act, 2013, which replaced the colonial Land Acquisition Act of 1894, improves on its predecessor but retains the fundamental mechanism of state power to compulsorily acquire land for a definition of "public purpose" that has been interpreted broadly enough to include private industrial projects that displace farming and tribal communities.

5.2 The Healthcare Crisis and Constitutional Failure

The right to health, which the Supreme Court has held to be implicit in the right to life under Article 21, has been one of the most systematically violated constitutional rights in India across the entire history of the Republic. India's public health system is chronically underfunded, staffed inadequately, and organized in ways that reflect the colonial legacy of urban-focused curative care rather than a modern understanding of public health as a system of population-wide prevention and treatment.

India's public health expenditure, at approximately 1.3 to 1.5 percent of GDP in the period 2020-2025, is far below the World Health Organization's recommended minimum of five percent of GDP and is lower than the expenditure of countries like Bangladesh, Nepal, and Sri Lanka, which are significantly poorer by per capita income measures. This underfunding has direct consequences: public hospitals are overcrowded, under-equipped, and understaffed; the out-of-pocket cost of medical care is a primary driver of poverty (medical expenditure pushes millions of households below the poverty line each year); the quality of care in public facilities is so poor that those who can afford any alternative avoid them, driving a massive and largely unregulated private healthcare sector whose quality varies enormously and whose costs are unaffordable for the majority.

The COVID-19 pandemic of 2020-2021 made visible, with devastating clarity, the consequences of decades of constitutional failure on healthcare. The second wave of COVID in April-May 2021 produced scenes of mass death, of patients dying on hospital floors, of cremation grounds unable to handle the volume of bodies, of oxygen shortages in hospitals that had been underfunded for decades, that constituted a systemic failure of the constitutional state of an order rarely seen outside of wartime. The constitutional right to life requires the state to maintain the institutional capacity to protect life: the COVID collapse demonstrated that this constitutional requirement had not been met, and that the constitutional mechanisms for holding the state

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accountable for this failure, primarily access to the courts, were themselves overwhelmed by the scale of the crisis.

The National Health Mission, the Ayushman Bharat scheme, and other governmental health initiatives represent genuine efforts to address the systemic failures of the public health system. Ayushman Bharat, which provides health insurance coverage for specified medical treatments to families identified as economically vulnerable, is a significant social protection measure. But it is a scheme for financing access to the existing (largely private and inadequate) healthcare system, not a mechanism for building the public healthcare infrastructure that a constitutional right to health requires. And its benefits have not reached the most marginalized populations, the rural poor, the adivasis, the daily wage laborers in the informal economy, in the proportions that the constitutional commitment to equality would require.

5.3 Education, Illiteracy, and the Constitutional Right That Came Too Late

The right to free and compulsory education for children between six and fourteen years was constitutionalized by the Eighty-Sixth Amendment in 2002 and given legislative form in the Right to Education Act, 2009 (RTE Act). These are significant constitutional achievements: they represent the conversion of a Directive Principle into a justiciable fundamental right and the creation of a legal framework for the delivery of that right.

But the implementation of the constitutional right to education has been deeply inadequate in ways that reflect, once again, the gap between constitutional text and constitutional reality that is the central theme of this textbook.

The RTE Act sets minimum standards for school infrastructure, teacher qualifications, and pupil-to-teacher ratios that have not been met in a substantial proportion of government schools, particularly in rural areas and in the economically weaker states. The Act's requirement that private schools reserve twenty-five percent of seats for children from economically weaker sections has been implemented unevenly, with many private schools finding ways to avoid or minimize this obligation. The quality of instruction in government primary schools, measured by learning outcomes (the ability of children to read and perform basic arithmetic), remains deeply inadequate: surveys by the NGO Pratham, documented in its annual ASER (Annual Status of Education Report) surveys, have consistently found that a majority of children completing primary school cannot read a simple text in their own language or perform simple arithmetic.

The constitutional failure on education has generational consequences. An illiterate or poorly educated adult cannot effectively participate in democratic life, cannot access the information necessary for informed voting, cannot use the legal system to enforce fundamental rights, cannot effectively participate in the formal economy, and is systematically vulnerable to the political manipulation that characterizes electoral politics in communities with low educational levels. The constitutional failure to deliver on the right to education is, therefore, not merely a social policy failure: it is a democratic failure that compounds every other constitutional failure.

The gender dimension of the education failure is particularly severe. While the gender gap in school enrollment has narrowed significantly over the decades, the gender gap in quality of

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education received, in continuation of education beyond primary level, and in the conversion of educational credentials into economic outcomes, remains large and deeply unjust. The constitutional commitment to gender equality, expressed in Article 15 and Article 16, is systematically violated by an educational system that continues to track girls away from higher education and professional careers in ways that reflect social norms that the constitutional framework has been inadequate to challenge.

5.4 The Farmer's Constitutional Plight: When Land is Power and Power is Taken

No discussion of how the constitutional order impacts Indian society can be complete without engaging with the condition of India's farming communities, who constitute the majority of the rural population and whose economic and social situation illuminates, with particular clarity, the gap between constitutional promise and constitutional reality.

The 2020-2021 farmers' protests, which involved hundreds of thousands of farmers from Punjab, Haryana, and Uttar Pradesh camping at the borders of Delhi for more than a year in protest against three agricultural laws that the government had passed without adequate consultation, were not merely an agricultural policy dispute. They were a constitutional moment: a moment in which the organized power of farming communities confronted the constitutional order's failure to protect their interests and forced a governmental retreat.

The three farm laws (the Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, the Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, and the Essential Commodities (Amendment) Act, all enacted in 2020) were introduced by the government as market liberalization measures that would benefit farmers by giving them more freedom to sell their produce. The farmers who protested against these laws saw them differently: as the dismantling of the minimum support price system, as the opening of agricultural markets to corporate players who would ultimately disadvantage small farmers, and as a further step in the constitutional subjugation of agriculture to industrial interests.

The constitutional dimensions of the farm laws controversy are multiple. The laws were passed as ordinances during the COVID lockdown, without parliamentary debate and without consultation with state governments that have constitutional jurisdiction over agriculture. This constitutional process was an example of executive legislation by ordinance that bypassed the normal parliamentary deliberation that should accompany legislation of such significance to the livelihoods of hundreds of millions of people. The Supreme Court stayed the implementation of the laws in January 2021 pending negotiation between the government and the farmers, a judicial intervention that was welcomed by the farming communities but that also raised questions about the appropriate role of the judiciary in mediating a dispute that was fundamentally political and constitutional in character.

The government eventually repealed the three laws in November 2021, a week before state elections in Punjab and Uttar Pradesh: the timing of the repeal made explicit what had been implicit throughout, namely that the government's policy on the farm laws was ultimately driven by electoral calculation rather than by principled constitutional engagement with the rights of farming communities.

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The constitutional dimensions of the farmers' plight go far beyond these specific laws. Indian agriculture is characterized by structural conditions of distress that the constitutional framework has been inadequate to address: land fragmentation that makes most landholdings too small for economically viable cultivation; insufficient public investment in irrigation, rural roads, and cold chain infrastructure; credit inaccessibility that drives farmers into the arms of informal moneylenders at usurious rates; price volatility that destroys the economic planning of farming households; and, increasingly, the effects of climate change on rainfall patterns and water availability that are being felt first and most severely by the farmers of rain-fed agricultural regions.

The constitutional provisions on agriculture (it appears in the State List, making it primarily a state subject) and the Directive Principles' directions on rural economy and peasant welfare have not been translated into a constitutional framework adequate to address these structural conditions. The result is a farming sector in which over ten thousand farmer suicides are recorded annually (and many more unreported), in which farmer indebtedness is the norm rather than the exception, and in which the terms of trade between agriculture and industry systematically transfer value from the rural poor to the urban economy.

CHAPTER SIX: THE DISTRIBUTION OF POWER AND ITS STRUCTURAL FAILURES

6.1 Local Self-Government: The Third Tier That Isn't

The 73rd and 74th Constitutional Amendments, enacted in 1992 and 1993, are generally cited as the most significant constitutional reform of the post-independence period in terms of power distribution. They constitutionalized the three-tier system of local self-government (gram panchayats, intermediate panchayats, and district panchayats in rural areas; ward committees, urban local bodies, and metropolitan authorities in urban areas), required states to hold regular elections to these bodies, established mandatory state finance commissions to recommend the devolution of resources to local bodies, and listed twenty-nine subjects in the Eleventh Schedule and eighteen subjects in the Twelfth Schedule as matters to be devolved to local bodies.

Thirty years after these amendments, the assessment of their implementation is one of profound disappointment. The constitutional mandate has not been translated into genuine local democracy in most states. The pattern of implementation varies significantly across states: Kerala has been a notable success story, genuinely devolving significant functions and resources to local bodies, while many other states have treated the constitutional mandate as a formal requirement to be minimally complied with rather than a genuine commitment to local democracy.

The failure of local self-government implementation has several constitutional causes.

The 73rd and 74th Amendments created constitutional obligations for states but did not create constitutional rights for local bodies. Local bodies cannot directly approach the Supreme Court or High Courts to enforce their constitutional rights to functions and finances, because they are

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not "state" within the meaning of Article 12 and cannot invoke Article 32 or Article 226 against state governments. The constitutional framework creates mandatory obligations at the state level (to hold elections, to constitute finance commissions) but provides inadequate judicial enforcement mechanisms for the more substantive obligations (to devolve functions and finances).

The state finance commissions that the amendments require have been constituted by most states, but their recommendations have been systematically underfunded. Local bodies, particularly in rural areas, receive transfers from state governments that are inadequate to fund even the minimum services they are supposed to provide: primary schools, primary health centers, water supply, sanitation, and rural roads. The inadequacy of local financial resources is both a cause and a consequence of local institutional weakness: inadequately funded local bodies cannot attract competent personnel, cannot plan effectively, cannot maintain infrastructure, and cannot deliver services, which further undermines confidence in and support for local government.

The gender dimensions of local self-government implementation deserve particular attention. The 73rd Amendment mandated a reservation of at least one-third of seats in panchayats for women, a provision that has been increased to fifty percent in several states. The formal implementation of this reservation has brought millions of women into the formal electoral process as voters and as elected representatives. This is a genuine constitutional achievement.

But the reality of women's participation in panchayat governance is more complex than the formal representation statistics suggest. In many states, particularly in rural north India, the phenomenon of "proxy representation" is widespread: elected women representatives are effectively managed by their husbands, fathers, or male relatives who are the de facto decision-makers even when women hold elected office. The constitutional achievement of formal representation has not, in these contexts, produced the substantive empowerment that the amendment intended. The constitutional remedy, awareness, enforcement, and the creation of institutional support for genuinely independent women's participation in local governance, requires resources and political will that have not been consistently provided.

6.2 The Bureaucracy: Colonial Service in Republican Clothing

The Indian Administrative Service (IAS), the successor to the Indian Civil Service (ICS) of the British colonial period, is one of the most powerful and most consequential constitutional institutions in India. Article 312 of the Constitution authorizes the creation of "All India Services" that serve both the Union and the states, and the IAS is the most important of these services. The IAS officer is the backbone of the Indian administrative state: the collector who is the de facto government in a district, the secretary who administers a ministry, the commissioner who manages an urban local body.

The colonial character of the IAS is both a strength and a profound limitation of the Indian constitutional order. The IAS's colonial inheritance includes a tradition of professionalism, of rule-based administration, of institutional memory, and of esprit de corps that gives it significant administrative capacity. These are real strengths that distinguish the Indian state from many

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developing countries in which the bureaucracy is simply a patronage machine without institutional culture or professional standards.

But the IAS's colonial inheritance also includes a tradition of distance from the governed, of paternalistic authority, of allegiance to the political executive rather than to the constitutional order, and of administrative processes that prioritize procedure over outcome. The typical IAS officer is educated in the elite institutions of metropolitan India, is posted to a district or ministry with which she or he has no prior relationship, is transferred every few years before any meaningful local rootedness can develop, and is accountable upward (to the state or central government) rather than downward (to the citizens served). This administrative architecture is precisely the architecture of colonial governance: it produces administrators who are loyal to the state and competent at implementing central directives, rather than servants of the public who are responsive to local needs and accountable to local communities.

The constitutional framework does not adequately address this problem. The Constitution protects IAS officers from arbitrary dismissal (Article 311) but does not create mechanisms of accountability to the governed. The constitutional commitment to responsive, citizen-oriented administration is expressed only in the Directive Principles (Article 43A, inserted by the Forty-Second Amendment, directs the state to secure the participation of workers in the management of industries, a provision more about economic democracy than about administrative accountability) and in the Right to Information Act, which creates a statutory mechanism for accessing information but not for challenging administrative decisions.

A constitutionally reformed administrative system would require elected local bodies to have genuine supervisory authority over the field administration in their areas, would require regular public accountability reporting by district administrators to local bodies and citizen groups, and would create effective mechanisms for the redress of administrative grievances that are faster, cheaper, and more accessible than the current system of courts and tribunals.

6.3 Judicial Access and the Constitutional Democracy of the Wealthy

The constitutional system of rights enforcement through litigation is, as noted in Part One, a system that is effectively accessible only to those with the resources to use it. But the extent of this exclusion, and its constitutional implications, deserve deeper analysis than Part One provided.

India has approximately 50 million cases pending in courts at all levels, as of 2024. The average time from filing to final decision in a civil case in a district court is measured in years: in some categories of cases, in some states, the average pendency is a decade or more. A High Court case may take five to ten years to be decided; a Supreme Court case, if it is not admitted as an urgent matter, may take fifteen to twenty years from filing to final disposal.

These numbers represent not just inefficiency or inadequacy: they represent systematic constitutional injustice. For the litigant who cannot wait years or decades for a court decision, the constitutional right to access justice is illusory. The poor litigant who has been evicted from her home, whose wages have been withheld, whose child has been denied admission to a public

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school, whose relative has died in police custody, cannot afford to wait a decade for the constitutional remedy that the Supreme Court has recognized she is entitled to. She accepts the injustice, because the process of obtaining the constitutional remedy would itself impose greater hardship than the injustice she has suffered.

The philosophy of law scholar Lon Fuller argued that legal systems have an "inner morality of law," a set of procedural requirements including accessibility, consistency, and prospectivity, without which law ceases to function as law and becomes mere coercion. By Fuller's standard, the Indian system of justice delivery fails the inner morality test in a fundamental way: it is not accessible to the majority of those whose legal interests are at stake, and an inaccessible legal system cannot fulfill the constitutional function of protecting rights and constraining arbitrary power.

The constitutional reformers who designed the fundamental rights chapter and the writ jurisdiction of the Supreme Court and High Courts were not, in this respect, designing a system for the Indian people as they actually were. They were designing a system for an imagined Indian people: educated, literate, professionally represented, and willing and able to engage in expensive, time-consuming constitutional litigation. The actual Indian people, the majority of whom were illiterate, poor, legally unrepresented, and unable to afford either the costs of litigation or the opportunity cost of time away from agricultural or labor work, were the afterthought, not the design objective.

The constitutional reforms necessary to address this failure are well-documented in the reports of the Law Commission of India, the National Commission to Review the Working of the Constitution (NCRWC), and in comparative constitutional scholarship. They include: a dramatic increase in the number of judges at all levels (from approximately 21 per million people to something approaching the WHO-comparable ratio of other democracies); procedural reform to eliminate unnecessary delays and adjournments; mandatory timeframes for the disposal of specified categories of cases; the creation of small claims courts and community justice mechanisms accessible to all; universal and genuinely effective legal aid; and the substantive expansion of alternative dispute resolution mechanisms that do not require the formal court system.

CHAPTER SEVEN: INDIA'S RECKLESS NEIGHBORHOOD AND THE CONSTITUTIONAL FOREIGN POLICY DEFICIT

7.1 The Constitutional Framework of International Relations: Democratic Deficit and Imperial Instinct

International relations scholarship distinguishes between "liberal internationalism," the approach to foreign policy that prioritizes international institutions, multilateral cooperation, and the spread of democratic norms, and "realism," the approach that prioritizes state power, strategic interest, and the management of adversaries in an anarchic international system. India's constitutional framework makes no explicit choice between these approaches: it directs the state

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to promote international peace and security in a Directive Principle, but it vests foreign policy decisions entirely in the executive, with no requirement of parliamentary approval for treaties, no constitutional integration of international law obligations, and no mechanism for public consultation or civil society input.

In practice, India's foreign policy has tended toward a form of "strategic autonomy" that combines elements of non-alignment ideology inherited from Nehru with growing great power ambitions, and that has in recent years developed an increasingly assertive and sometimes coercive relationship with its immediate neighbors. The constitutional framework, because it places no democratic constraints on executive foreign policy, has enabled this evolution without any formal mechanism for democratic accountability.

The Pakistan relationship is the most visible and most consequential dimension of India's neighborhood problem. Seventy-five years after independence, India and Pakistan remain in a state of frozen hostility over Kashmir, with periodic escalations including the Kargil conflict of 1999, the post-Pulwama tensions of 2019, and continuing cross-border violence. The abrogation of Article 370 in 2019, which the Indian government undertook unilaterally without any engagement with Pakistan or with the Kashmiri people, represents the maximum constitutional assertion of India's territorial position: a position from which no meaningful negotiation is possible.

The constitutional consequences of this frozen hostility are severe for Indian citizens as well as Pakistani ones. The defense budget, required to maintain the military posture of confrontation with both Pakistan and China simultaneously, consumes approximately 2 percent of GDP: a sum that, if redirected to education, health, and social infrastructure, would significantly accelerate human development. The security apparatus required to manage the insurgency in Jammu and Kashmir, which has cost tens of thousands of lives over the decades, imposes enormous fiscal and social costs that fall disproportionately on the citizens of J&K themselves.

The relationship with China represents a different but equally troubling dimension of India's neighborhood problem. The 2020 border standoff in the Galwan Valley, which resulted in the deaths of twenty Indian soldiers and an unknown number of Chinese soldiers, led to a dramatic deterioration of India-China relations and a significant increase in defense expenditure and infrastructure investment in border areas. The constitutional framework for these decisions, again, involves virtually no democratic accountability: the decisions about border management, about the diplomatic posture to be adopted toward China, about the economic decoupling measures taken against Chinese companies, about the trade-offs between strategic assertiveness and economic partnership, are made exclusively by the executive with minimal parliamentary scrutiny.

The relationship with Nepal, a constitutionally democratic neighbor with deep cultural, economic, and human connections to India, has been damaged by India's periodic use of its geographic and economic dominance in ways that Nepalese citizens and policymakers have experienced as coercive and disrespectful. The 2015 blockade, motivated by India's concerns about Nepal's constitution-making process (particularly regarding the political status of the Madhesi and Tharu communities of the Terai), was widely experienced in Nepal as a form of

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economic warfare by a large neighbor against a small one, and it generated an anti-India sentiment that has pushed Nepalese politics toward a closer relationship with China than either country's shared cultural heritage or democratic values would suggest as natural.

The relationship with Bangladesh, India's most economically interdependent neighbor, involves unresolved issues of water sharing (the Teesta river), undocumented migration, and the rights of Bengali-speaking communities in border areas. The Citizenship Amendment Act and the National Register of Citizens in Assam have created anxiety in Bangladesh about the potential externalization of statelessness: the concern that persons of Bangladeshi origin who are excluded from the NRC might be deported to Bangladesh, creating a refugee crisis for a country that already manages enormous population pressures.

The relationship with Sri Lanka involves the painful legacy of India's intervention in the Sri Lankan civil war in the late 1980s, its subsequent withdrawal after the assassination of Rajiv Gandhi by the LTTE, and its complicated relationship with the Tamil community of Sri Lanka during and after the war's final stages in 2009. Tamil Nadu's political sensitivities about the treatment of Sri Lankan Tamils created domestic constitutional tensions, with the state government sometimes at odds with the central government's foreign policy positions in ways that illustrated the inadequacy of the constitutional framework for managing the intersection of domestic political concerns and foreign policy decisions.

7.2 The SAARC Failure: A Constitutional Critique of Regional Cooperation

The South Asian Association for Regional Cooperation (SAARC) was established in 1985 as a regional organization intended to promote economic cooperation, cultural exchange, and collective security among the nations of South Asia. It has been, by any measure, one of the least effective regional organizations in the world, a failure that reflects primarily the political tensions between India and Pakistan but also the broader pattern of Indian regional policy that treats the organization as a potential mechanism for Indian regional hegemony rather than as a genuine multilateral forum.

India's constitutional framework for engaging with SAARC and other regional institutions is, as noted, essentially unconstrained democratic accountability. The decisions about India's level of engagement with SAARC, about the conditions under which India is willing to participate in SAARC summits, about the trade and investment agreements India is willing to sign with SAARC neighbors, are made by the executive without parliamentary debate and without any constitutional obligation to prioritize regional cooperation over bilateral strategic competition.

The contrast with the European Union model is instructive. The EU's constitutional framework, established through a series of treaties that were subject to parliamentary ratification in member states, created binding legal obligations for cooperation, common standards and regulations, mechanisms for dispute resolution, and institutional structures for ongoing political engagement that transcend the bilateral relationships between individual member states. The EU model has its own problems, as demonstrated by Brexit and by the struggles of European integration in the period 2016-2026. But the depth of economic integration and the mechanisms for managing

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political disputes through institutional processes rather than bilateral confrontation represent a model of regional constitutional order that SAARC has entirely failed to develop.

The failure of SAARC is not primarily India's constitutional problem: it reflects the political dynamics of a region in which the largest power and its immediate rival have a conflict of existential dimensions that cannot be managed by regional institutions. But India's constitutional framework's failure to create democratic accountability for regional policy decisions means that even when opportunities for more cooperative regional approaches exist, there are no institutional mechanisms for domestic democratic forces to push the executive toward cooperation.

7.3 The Rohingya Crisis, Refugee Rights, and Constitutional Limitations

India's response to the Rohingya refugee crisis, which produced hundreds of thousands of displaced persons from Myanmar following the military's 2017 campaign of ethnic cleansing and the subsequent 2021 military coup, illustrates the constitutional inadequacy of India's approach to its neighborhood and to its international human rights obligations.

India is not a signatory to the 1951 Refugee Convention or its 1967 Protocol, which establish the international law framework for the protection of refugees. This absence from the international refugee law framework is a constitutional choice: the executive has consistently declined to sign the convention or to enact domestic refugee legislation, leaving the treatment of refugees in India entirely to executive discretion.

The consequences of this constitutional choice have been severe. Rohingya refugees in India have been subject to detention, to deportation proceedings, and to official characterization as "illegal immigrants" whose presence constitutes a national security threat, language that elides the distinction between economic migrants and persons fleeing ethnic persecution and that is inconsistent with India's obligations under customary international law regarding non-refoulement, the principle that persons may not be returned to territories where they face persecution.

The Supreme Court has addressed the Rohingya issue in several cases, most notably Md. Salimullah v. Union of India, in which petitions challenged the deportation of Rohingya refugees from India. The Court's handling of these cases has been criticized for failing to adequately weigh India's customary international law obligations against the executive's claimed national security interests, and for failing to require the kind of individual assessment of refugee claims that international refugee law demands.

The constitutional reform needed here is clear: India should accede to the Refugee Convention and enact domestic refugee legislation that creates a legal framework for the assessment of refugee claims, the protection of recognized refugees, and the management of returns that complies with international non-refoulement obligations. The failure to do so is a constitutional failure with immediate consequences for real human beings: Rohingya refugees in India who are threatened with deportation to a Myanmar where they face persecution.

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CHAPTER EIGHT: BRITISH CONSTITUTIONAL LEGACY AND ITS SYSTEMATIC MISUSE

8.1 The Legal Architecture of Colonial Control: Survival and Mutation

The most disturbing aspect of the British constitutional legacy in India is not its initial imposition but its survival and mutation: the way in which legal instruments designed for colonial control of a subjugated population have been adapted, maintained, and in some respects strengthened in independent India, retained not because they serve the interests of the Indian people but because they serve the interests of the governments that inherited them.

The analysis of specific colonial-era legal continuities that follows is not merely historical: it is a living constitutional critique, because the laws and practices described continue to shape the daily lives of Indian citizens in 2026.

The Criminal Procedure Code (CrPC), replaced in 2023 by the Bharatiya Nagarik Suraksha Sanhita, was itself a product of colonial codification in 1973, but retained structural features that traced directly to colonial law. The CrPC's provisions on bail, remand, and the right to be produced before a magistrate within twenty-four hours of arrest were colonial procedural rules that were retained by the independent republic with minimal modification. These procedural rules, designed for a system in which the state's power of arrest was assumed to be broadly justified and in which individual liberty was conditional on state tolerance, are structurally different from the procedural rules that a genuinely rights-oriented constitutional order would design.

The Indian Evidence Act, 1872, replaced by the Bharatiya Sakshya Adhiniyam in 2023, was colonial codification of evidence law that was designed for a court system serving colonial purposes: the efficient processing of cases involving a colonial subject population by colonial administrators. Its provisions on confessions, on the admissibility of statements made to police officers, and on the burden of proof in certain categories of cases were designed within a framework of assumptions about the relationship between state and subject that is inconsistent with the constitutional presumption of innocence and the right against self-incrimination.

The 2023 replacement of the British-era penal and procedural codes was presented by the government as a decolonization of the criminal law: the removal of the colonial labels "Indian Penal Code" and "Criminal Procedure Code" and their replacement with Indian-language titles. But the substantive content of the new codes was extensively criticized by legal practitioners, bar associations, and constitutional scholars for retaining or in some respects worsening the colonial structural features of the codes they replaced. The new codes were enacted through Parliament with minimal scrutiny and without the kind of comprehensive law reform consultation that legislation of this fundamental importance to every citizen's rights would require in a genuine constitutional democracy.

8.2 The Forest Rights Question: Colonial Dispossession Under Constitutional Cover

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The history of forest rights in India is a history of colonial dispossession that has been continued and in some respects deepened by the constitutional state of independent India. The colonial-era forest laws, the Indian Forest Act 1927 and its predecessors, asserted state ownership and control over vast forest areas that had, for generations, been the home, the livelihood, and the cultural matrix of tribal and forest-dwelling communities. The colonial state criminalized the customary practices of these communities, turning pastoralists into trespassers and cultivators into encroachers, and created a forest bureaucracy whose institutional interest lay in maintaining state control over forest land rather than recognizing the rights of forest communities.

The independent Indian state inherited this framework and, for the most part, maintained it. The Wildlife (Protection) Act, 1972, and the subsequent expansion of national parks, tiger reserves, and wildlife sanctuaries further extended the state's claim to forest land at the expense of forest communities' rights. The Constitution's provisions for tribal rights (the Fifth and Sixth Schedules) provided a formal framework of protection but proved inadequate against the combination of state power and bureaucratic indifference to tribal rights.

The Forest Rights Act, 2006, was intended to rectify what the Act itself describes as "historical injustice" to forest-dwelling communities: the recognition of individual and community rights over forest land that communities had cultivated and used for generations. The FRA was a significant legislative achievement, potentially transforming the constitutional status of millions of forest-dwelling tribal people from encroachers to rights-holders.

But the implementation of the FRA has been a chronicle of bureaucratic resistance and political failure. State governments and forest bureaucracies have been systematically hostile to the recognition of rights under the FRA, filing objections to claims in large numbers, rejecting claims without adequate investigation, and using the process of "verification" to deny rights to communities that the Act clearly intended to protect. The Supreme Court's 2019 order directing the eviction of over a million families whose FRA claims had been rejected, later stayed after public outcry, illustrated the vulnerability of tribal land rights even under a constitutional framework that formally recognizes them.

The FRA's inadequate implementation is a constitutional failure of multiple dimensions: a failure of the administrative state to implement a legislative mandate, a failure of the courts to enforce the Act's provisions effectively, a failure of the political system to prioritize the rights of the most marginalized communities, and a failure of the constitutional framework for tribal rights to provide effective mechanisms for enforcing those rights against the hostility of the administrative state.

8.3 The AFSPA: Constitutional Brutality in Disguise

The Armed Forces (Special Powers) Act, 1958 (AFSPA) is perhaps the clearest surviving example of a colonial-era legal logic in the constitutional order of independent India. The Act, which applies to areas declared "disturbed" by the central or state government, grants members of the armed forces and central paramilitary forces immunity from civil and criminal prosecution for actions taken in the course of their duties in disturbed areas, except with the prior sanction of the central government.

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The immunity from prosecution that AFSPA provides is effectively absolute: the central government sanction for prosecution has never, in the decades of the Act's operation, been granted in any case. Armed forces personnel operating under AFSPA have killed civilians in encounter killings that independent investigations have described as extrajudicial executions, have subjected civilians to torture and sexual violence, have destroyed civilian property, and have engaged in a range of human rights violations documented by the UN Special Rapporteurs, by Human Rights Watch, by Amnesty International, and by the Justice Verma Committee. Not a single member of the armed forces has been convicted in a civilian court for any offense committed in an AFSPA area.

The constitutional validity of AFSPA has been extensively litigated. The Supreme Court in Naga People's Movement of Human Rights v. Union of India (1998) upheld the Act's constitutional validity, finding that it was a reasonable restriction on fundamental rights in the interest of national security. The Supreme Court in Extra Judicial Execution Victim Families Association v. Union of India (2016) held that the right to life cannot be suspended even in disturbed areas, and that the security forces have no right to kill except in self-defense or to prevent escape of a person who presents an imminent danger. The Court directed the investigation of over 1,500 alleged encounters in Manipur.

The gap between these judicial declarations and the ground reality is a constitutional disgrace. The investigations ordered by the Supreme Court in 2016 are still largely incomplete as of 2026. The AFSPA continues to operate in Nagaland, Manipur, parts of Assam, and until 2022 in parts of Jammu and Kashmir. The civilian populations of these areas live under a constitutional framework in which the most basic rights, the right to life, the right to bodily integrity, the right to judicial protection against arbitrary state violence, are effectively suspended in the interest of a "security" that has never been adequately defined or proportionality-analyzed.

The constitutional reform required is clear and has been recommended by the Justice Jeevan Reddy Committee (2005), by the Second Administrative Reforms Commission, and by multiple human rights organizations: the repeal of AFSPA and its replacement with a legal framework that authorizes counter-insurgency operations subject to the same legal constraints that apply to ordinary law enforcement, with full accountability for violations through independent civilian investigation and prosecution. The failure to implement these recommendations reflects the continued operation of a colonial logic in the constitutional state: the logic that certain populations are subjects of security management rather than citizens of a constitutional democracy.

CHAPTER NINE: WHY A NEW CONSTITUTION IS NOT MERELY DESIRABLE BUT NECESSARY

9.1 The Argument from Constitutional Accumulation

The case for a new constitution, rather than continued incremental reform, is not primarily an ideological argument. It is an empirical argument: the argument that the accumulation of colonial

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inheritance, structural design failures, amendment-induced distortions, interpretive mutations, and institutional degradations that have been documented across this textbook and its predecessor part has produced a constitutional order that cannot be adequately remedied through the existing amendment process, and that requires fundamental constitutional reconstitution.

The Bibek Debroy argument for a new constitution, made in 2024, has been criticized as potentially serving the interests of the current government rather than the interests of the Indian people, because a constitutional replacement conducted under the current political configuration would be vulnerable to capture by majoritarian political forces. This is a legitimate concern. But it does not address the substance of the argument for reconstitution. It is an argument about process, not about the need for the outcome.

The arguments for constitutional reconstitution, organized into distinct theoretical categories, are as follows.

The historical legitimacy argument holds that a constitution is a founding document of a political community, a document that represents the community's foundational choices about how to organize political life. The Indian Constitution was not made by the Indian people in any meaningful sense: it was made by an indirectly elected Constituent Assembly that represented a restricted fraction of the population, was dominated by a social elite, and was operating in a context of emergency (partition, communal violence, economic crisis) that distorted its choices in the direction of the familiar and the safe. Seven decades of democratic experience have produced a much deeper and more widespread understanding of constitutional needs and possibilities among the Indian people. A new constitution made through a genuinely participatory process would have a democratic legitimacy that the current constitution, whatever its legal authority, cannot claim.

The structural inadequacy argument holds that the structural choices of the current constitution, its semi-federal architecture, its FPTP electoral system, its non-justiciable social rights, its governor appointment system, its emergency powers framework, its preventive detention authorization, are so deeply embedded in the constitutional architecture that they cannot be adequately reformed through the amendment process. The amendment process itself is controlled by the political actors who benefit most from the current structure, creating an institutional self-perpetuation problem that only a constituent process outside the current framework can solve.

The colonial contamination argument holds that the proportion of the current constitution that derives from the colonial Government of India Act, 1935, and that retains the structural logic of colonial administrative control, is too large to be remedied by amendment. The colonial contamination is not merely in specific provisions that can be repealed or replaced: it is in the fundamental assumptions of the constitutional order about the relationship between state and citizen, about the purpose of administrative power, about the function of law. These assumptions need to be confronted directly and systematically in a new constitutional founding, not addressed piecemeal through amendments to a document that they pervade.

The democratic failure argument holds that the constitution has failed to produce the democratic outcomes it promised. It has produced a system that is increasingly authoritarian in practice, that

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is characterized by the systematic exclusion of the poor, the marginalized, and the politically powerless from the benefits of constitutional government, that has failed to achieve the social and economic transformation it promised, and that is increasingly being used as an instrument of elite power against popular aspiration. This failure is not incidental but structural, and structural failures require structural remedies.

The comparative constitutional argument holds that India's constitutional challenges are not unique, but that India's responses to them are remarkably inadequate compared to the constitutional experiences of comparable democracies. The Constitutional Court systems of Germany and South Africa, the proportional representation systems of Northern Europe, the justiciable socioeconomic rights of South Africa's post-apartheid constitution, the federal financial arrangements of Australia and Canada, the transparency requirements for political parties in Germany and Spain: these comparative constitutional models demonstrate that better constitutional design is possible and has been achieved elsewhere. India's continued adherence to its colonial constitutional inheritance, in the face of these comparative alternatives, requires justification that has never been adequately provided.

9.2 The South African Constitution as a Comparative Model

The Constitution of the Republic of South Africa, 1996, is, by a wide consensus of comparative constitutional scholars, the most progressive constitution in the world. It was drafted through a genuinely participatory process involving extensive public consultation, it incorporated the lessons of comparative constitutional experience from dozens of jurisdictions, it included justiciable socioeconomic rights as a central feature of its bill of rights, and it was designed specifically to address the structural injustices of a system (apartheid) that, like the Indian caste system, had organized society around a hierarchy of group-based privilege and exclusion.

The South African Bill of Rights includes justiciable rights to housing, health care, food, water, social security, and education. Section 26 provides that "everyone has the right to have access to adequate housing" and that "the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right." Section 27 provides similar justiciable rights to health care, food, water, and social security.

The South African Constitutional Court has enforced these rights in a manner that has produced real, measurable improvements in the lives of millions of South Africans, while also developing a sophisticated doctrine of "progressive realisation" that avoids the institutional competence problems that critics of justiciable socioeconomic rights fear. The Court has not issued orders directing governments to build specific houses or hospitals: it has instead required governments to adopt reasonable plans for the progressive realisation of rights and has struck down governmental programmes that failed to give adequate priority to the most vulnerable.

The Indian constitutional order could adopt the South African model of justiciable socioeconomic rights with appropriate adaptations. The Directive Principles that are currently non-justiciable could be constitutionalized as justiciable rights subject to a "progressive realisation" standard that acknowledges resource constraints while creating genuine constitutional obligations and judicial enforcement mechanisms. This would not require a

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completely new constitution: it could, in principle, be achieved through constitutional amendment. But the resistance to justiciable socioeconomic rights from the political and judicial elite that benefits from the current arrangement makes amendment in this direction politically difficult, and makes the argument for a new constituent process correspondingly stronger.

9.3 The German Basic Law as a Model for Constitutional Reform

The German Basic Law (Grundgesetz) of 1949, adopted in the aftermath of the Nazi catastrophe, represents a different model of constitutional learning from failure. The framers of the Basic Law were acutely conscious of the ways in which the Weimar Constitution's design had facilitated the collapse of democratic government and the rise of totalitarianism: the excessive power of the President, the proportional representation system without an effective threshold, the absence of an eternity clause protecting constitutional fundamentals, and the inadequacy of mechanisms to defend the constitutional order against anti-constitutional forces.

The Basic Law's responses to these Weimar failures are instructive for India's constitutional reform debate.

The Basic Law's eternity clause (Article 79(3)) provides that certain fundamental principles, including the federal structure, the role of the Lander (states) in the legislative process, and the basic rights guaranteed in Articles 1 through 20, cannot be amended even by a supermajority. This is the equivalent of India's basic structure doctrine, but with one crucial difference: the content of the unamendable core is specified in the constitutional text rather than determined by judicial interpretation. The Indian basic structure doctrine, because it is a judicial creation whose content is determined case by case, gives the judiciary enormous discretionary power over constitutional change, raising the democratic legitimacy concerns discussed in Part One. A constitutional amendment specifying an explicit eternity clause along the German model would be more democratically accountable than the current judge-made basic structure doctrine.

The Basic Law's mechanism for protecting parliamentary democracy against executive capture is also instructive. The "constructive vote of no confidence" (Article 67) provides that the Chancellor (Prime Minister) can only be removed by a parliamentary majority that simultaneously elects a successor. This prevents the use of a no-confidence vote as a purely destructive mechanism that removes a government without installing an alternative, which was a destabilizing feature of Weimar parliamentary politics. An adaptation of this mechanism in India would prevent some of the most irresponsible uses of legislative instability that have characterized Indian coalition politics, while maintaining the parliamentary principle of executive accountability to the legislature.

The Basic Law's provisions on political parties (Article 21) require that political parties "shall conform to democratic principles" and that parties that "by reason of their aims or the behaviour of their adherents seek to undermine or abolish the free democratic basic order or to endanger the existence of the Federal Republic of Germany shall be unconstitutional." The Federal Constitutional Court has the power to declare a party unconstitutional, a power it has exercised (against neo-Nazi parties) and has declined to exercise (against the post-communist PDS) in ways that balance freedom of political organization against constitutional self-defense. An

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adaptation of Article 21 in the Indian constitutional context, requiring parties to have democratic internal structures and prohibiting parties whose fundamental aims are incompatible with constitutional democracy, would address some of the most serious pathologies of the Indian political party system.

9.4 Constitutional Reform Processes: Learning from Global Experience

The design of the constitutional reform process is as important as the substance of the reforms. Constitutional reform processes that are captured by the existing power structures, that exclude marginalized voices, or that move too quickly without adequate public deliberation tend to produce constitutions that replicate existing power arrangements in new formal clothing rather than genuinely transforming the constitutional order.

Global constitutional reform experience since 1990 offers several models.

The South African constitutional transition, which proceeded through a negotiated interim constitution (1993) that established the broad parameters of the transition and a genuinely participatory process for the final constitution (1996), involving a Constitutional Assembly, public submissions from millions of citizens, and certification by the Constitutional Court of the final text against constitutional principles agreed in the interim constitution, is widely regarded as the gold standard of constitutional transition processes. The participation it achieved, and the legitimacy it produced for the final constitutional text, have been crucial to the relative stability of the South African constitutional order despite the enormous social and economic challenges the country faces.

The Icelandic crowd-sourced constitution of 2011, while ultimately not adopted by the Icelandic Parliament, demonstrated the possibility of using modern technology and deliberative processes to involve the general public in constitutional deliberation on a scale that was previously impossible. A thousand randomly selected citizens participated in the constitutional assembly, and the wider public could follow and comment on the drafting process through social media. The experience demonstrated both the possibilities and the limitations of participatory constitutional drafting.

The Chilean constitutional reform process of 2019-2023, which was initiated by massive popular protests against economic inequality and political exclusion, involved a uniquely representative constitutional convention with gender parity and reserved seats for indigenous communities. The failure of the first proposed constitution in the referendum of 2022 (it was rejected by 62 percent of voters) and the failure of the second proposed constitution in 2023 (rejected by 55 percent) illustrates the difficulty of constitutional reform in highly polarized political environments, and underscores the importance of building broad cross-partisan and cross-social support for constitutional reform proposals before bringing them to popular ratification.

For India, the lessons of comparative constitutional reform experience suggest several requirements for any genuine constitutional reform process. The process must be initiated and controlled by a body that is genuinely independent of the existing political structures, not by the Parliament or the government in power. The body must be elected by universal suffrage with

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proportional representation to ensure adequate representation of all social communities. The process must involve extensive, sustained, and genuine public consultation at the local, state, and national levels, conducted in all major Indian languages and accessible to illiterate citizens through community engagement processes. The final constitutional text must be subject to popular ratification, ensuring that the new constitutional order has the mandate of the people it will govern.

CHAPTER TEN: THEORIES, CONTROVERSIES, AND THE JURISPRUDENTIAL HORIZON

10.1 Critical Legal Studies and the Indian Constitution

Critical Legal Studies (CLS), the intellectual movement that emerged in American law schools in the late 1970s and early 1980s, offers theoretical resources for understanding the Indian constitutional order that have been underutilized in Indian constitutional scholarship.

The core CLS claim, associated with scholars including Duncan Kennedy, Mark Kelman, and Roberto Unger, is that law is not a neutral system of rules that transcends political controversy, but is rather a political practice that systematically reproduces existing power arrangements while presenting itself as objective and inevitable. CLS scholars argue that legal doctrine is indeterminate (that is, that legal rules and precedents underdetermine outcomes and that the choice between competing legal possibilities always involves a political judgment that the legal form conceals), and that legal education and legal practice serve to naturalize existing social arrangements by presenting them as the necessary consequences of neutral legal reasoning.

Applied to the Indian Constitution, the CLS framework illuminates several features that conventional constitutional scholarship tends to underemphasize. The constitutional doctrine of "reasonable restrictions" under Article 19(2) through 19(6), which allows fundamental freedoms to be restricted for specified purposes, is a classic example of legal indeterminacy: the category of "reasonable" restrictions is broad enough that virtually any restriction can be justified by creative legal reasoning, and the constitutional protection of fundamental freedoms is correspondingly thin. The reasonableness standard is not a determinate legal rule but an open-ended invitation for political judgment exercised by judges whose social formation is far more similar to the governmental perspective than to the perspective of the citizen whose freedoms are restricted.

The CLS critique of rights discourse is also illuminating. Roberto Unger and other CLS scholars have argued that rights-based constitutionalism tends to individualize and depoliticize social conflicts that are fundamentally about the distribution of power and resources. When the denial of adequate housing to millions of poor urban citizens is framed as a potential violation of the right to life under Article 21, the constitutional discourse focuses on individual cases and judicial remedies rather than on the structural political and economic arrangements that produce homelessness. This individualizing and depoliticizing effect of rights discourse, the CLS argument goes, actually serves the interests of the powerful by converting structural political

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conflicts into manageable legal ones that can be addressed through narrow judicial remedies without challenging the underlying distribution of power.

The postcolonial variant of this CLS critique, associated with scholars including Upendra Baxi, Rajeev Bhargava, and Partha Chatterjee, emphasizes the specific ways in which the Indian constitutional order's inheritance of colonial legal forms has naturalized the power arrangements of the colonial period and made them appear as the necessary and neutral structure of a constitutional democracy. Baxi's work on "subaltern constitutionalism," his emphasis on the ways in which the Indian Constitution has been appropriated and rearticulated from below by marginalized communities and social movements in ways that the framers did not intend and the courts have not fully acknowledged, offers a more hopeful perspective on the transformative potential of the constitutional order, but does not refute the fundamental CLS critique.

10.2 Republican Constitutional Theory and the Indian Democratic Deficit

Philip Pettit's neo-republican political theory, which grounds political freedom in the concept of "non-domination" rather than in the concept of non-interference (which is the standard liberal understanding of freedom), offers an alternative theoretical framework for evaluating the Indian constitutional order.

For Pettit, a person is free not when they are not actually interfered with, but when they are not subject to domination: when no other agent has the power to arbitrarily interfere with their choices. Domination is the capacity to interfere arbitrarily, whether or not that capacity is actually exercised. A slave who happens to have a benevolent master is not free in the republican sense, because the master retains the capacity to interfere and the slave's good treatment depends on the master's goodwill rather than on the slave's right.

Applied to the Indian constitutional order, Pettit's framework produces a devastating critique. Indian citizens are subject to domination in multiple dimensions of their lives.

The rural poor are dominated by landlords, by moneylenders, by the caste hierarchy, and by the local administration, all of which have the capacity to arbitrarily interfere with their choices in ways that cannot be effectively challenged through the constitutional mechanisms that formal equality provides. The constitutional guarantee of equality before the law does not prevent domination: it merely provides a formal legal claim that the dominated person cannot effectively enforce.

Citizens across the income distribution are dominated by the state in ways that the Constitution's formal rights framework does not adequately prevent. The state, through its powers of licensing, regulatory approval, tax administration, land acquisition, criminal law enforcement, and surveillance, has enormous capacity to arbitrarily interfere with individual choices. The formal constitutional protections against state power (fundamental rights, procedural protections, judicial review) are inadequate to prevent the exercise of state domination because they are accessible only to those with the resources to use them, and because the institutional culture of the Indian state remains, as we have argued, more oriented toward administrative control than toward the service of citizens.

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Citizens living in AFSPA areas are subject to the most extreme form of state domination: the armed forces' power to deprive them of life and liberty without the accountability that would require any justification.

The republican constitutional theory prescription for addressing these forms of domination is the creation of genuinely effective mechanisms of popular control over the institutions that exercise power: mechanisms that give citizens the capacity to contest the exercise of power, to demand justification, and to ensure that powerful institutions are genuinely accountable to the people they affect. These mechanisms include not only formal legal rights and judicial review, but also genuine freedom of expression and association, genuine transparency in governmental decision-making, robust civil society organizations capable of monitoring and challenging power, and democratic processes at all levels of government that give ordinary citizens real influence over collective decisions.

10.3 The Puttaswamy Privacy Legacy and Its Future

The Supreme Court's 2017 judgment in K.S. Puttaswamy v. Union of India (the Privacy Judgment), holding that privacy is a fundamental right under Articles 14, 19, and 21 of the Constitution, represents one of the most significant constitutional developments of the recent decade, and its implications are still being worked out in subsequent cases and legislation.

The Privacy Judgment was a nine-judge bench decision that unanimously overruled the earlier decisions in M.P. Sharma v. Satish Chandra (1954) and Kharak Singh v. State of UP (1963) that had denied that privacy was a fundamental right. The unanimous constitutional basis of the decision gives it extraordinary precedential weight, and subsequent constitutional developments in data protection, in the regulation of surveillance, and in the digital economy have been shaped by its framework.

The judgment's scope is broad: it holds that privacy encompasses the right to decisional autonomy (the right to make choices about one's own life), the right to informational privacy (the right to control information about oneself), and the right to bodily integrity. It acknowledges that privacy is not absolute and can be restricted by the state, but requires that restrictions be proportionate to a legitimate aim, necessary for achieving that aim, and subject to procedural safeguards.

The Digital Personal Data Protection Act, 2023 (DPDPA) was the legislative response to the Puttaswamy judgment in the domain of data protection. The Act has been criticized by digital rights scholars and by the report of the Parliamentary Standing Committee on Science and Technology for failing to adequately implement the Puttaswamy framework: its exemptions for government data processing are broad, its enforcement mechanism through a Data Protection Board lacks adequate independence from the government, and its provisions on consent are significantly weaker than the European General Data Protection Regulation (GDPR) that the Act has been compared to.

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The constitutional challenge to the DPDPA's adequacy in implementing the Puttaswamy judgment is a live question before the Supreme Court, as of 2026. The outcome of this litigation will significantly determine the scope of the constitutional right to privacy in the digital age.

The Puttaswamy legacy also intersects with the Aadhaar system, the world's largest biometric digital identity system, which has enrolled over one billion Indian residents. The Supreme Court in K.S. Puttaswamy v. Union of India (II) (2018) upheld the constitutionality of the Aadhaar system by a 4-1 majority, striking down some provisions (regarding the use of Aadhaar authentication by private entities and the mandatory use of Aadhaar for school admissions and mobile phones) while upholding its use for government benefit delivery. Justice D.Y. Chandrachud, the sole dissenter, wrote a powerful opinion arguing that the Aadhaar system, in its totality, created a "surveillance state" that was incompatible with the constitutional right to privacy recognized unanimously in Puttaswamy.

The dissent in Aadhaar II deserves more attention than it has received. The creation of a universal biometric database that links an individual's identity across all their interactions with the state and with private entities creates a surveillance infrastructure of extraordinary power: the power to track an individual's movements, financial transactions, health interactions, and government benefit claims across time and space. The constitutional adequacy of the safeguards the state has created for this surveillance infrastructure is a question that the Puttaswamy legacy has put at the center of Indian constitutional law, and the answers that emerge from the courts and from the legislature will fundamentally shape the relationship between the citizen and the digital state.

10.4 The Intersection of Constitutional Theory and Recent Constitutional Controversies

The period 2024 to 2026 has produced several constitutional controversies that illuminate the theoretical issues analyzed in this textbook.

The challenge to the Waqf (Amendment) Act, 2025, which restructured the governance of Muslim religious endowments, raises fundamental questions about the relationship between state power and religious autonomy, between the constitutional right to manage religious affairs (Article 26(b)) and the state's power to regulate institutions associated with religion in the public interest. The constitutional adjudication of these questions will require the Supreme Court to engage seriously with the philosophy of religious liberty, with the comparative constitutional treatment of minority religious institutions, and with the principle of equal treatment between religious communities that is one of the constitutive commitments of constitutional secularism.

The Bihar voter roll controversy, highlighted in the Freedom in the World 2026 report, raises questions about the constitutional integrity of the electoral process and about the accountability mechanisms that are supposed to protect that integrity. If opposition allegations of large-scale voter roll manipulation are substantiated, they would represent a constitutional violation of the most fundamental kind: the manipulation of the process by which citizens exercise their sovereign power to choose their government. The constitutional mechanisms for investigating and remedying such violations, through the Election Commission and through electoral petition proceedings before High Courts, have historically been slow and inadequate. The standard of

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electoral integrity that a constitutional democracy requires is not merely the absence of proven fraud: it is a demonstrably fair process that includes transparent voter roll management, independent oversight, and accessible mechanisms for challenging irregularities.

The ongoing controversy about the sedition replacement in the Bharatiya Nyaya Sanhita connects to the theoretical debates about the limits of state power to restrict expression. Section 150 of the BNS, which criminalizes "acts endangering sovereignty, unity and integrity of India," has been challenged as a dressed-up version of the colonial sedition law, as an unconstitutional restriction on political speech that goes beyond the "reasonable restrictions" permitted by Article 19(2). The Supreme Court's handling of this challenge will be a significant indicator of the Court's willingness to enforce the constitutional guarantee of free speech against a government that has demonstrated its willingness to use criminal law against critics and dissidents.

CHAPTER ELEVEN: THE AGENDA FOR CONSTITUTIONAL RECONSTRUCTION

11.1 An Electoral System for the Twenty-First Century

The case for replacing the FPTP electoral system with a proportional or mixed proportional system is, as we have argued, overwhelming. The specific choice among proportional systems is a matter for democratic deliberation rather than textbook prescription, but the comparative experience of countries that have adopted various forms of proportional representation offers clear guidance.

The "Mixed Member Proportional" (MMP) system, used in Germany and New Zealand, combines constituency-based representation with party-list proportional representation in a way that ensures overall proportionality between votes and seats while maintaining geographical representation through single-member constituencies. Under MMP, each voter casts two votes: one for a constituency candidate and one for a party. The constituency seats are filled by the FPTP method; the party-list seats are then allocated to bring each party's total representation into proportion with its share of the party vote.

The German version of MMP includes a five-percent threshold for party-list representation, preventing the extreme fragmentation of the parliamentary group that pure proportional systems can produce and that has, historically, been destabilizing in multi-party parliamentary systems. The New Zealand version has a lower threshold (either five percent of the party vote or one constituency seat) that allows smaller parties to participate in the proportional allocation.

An adaptation of MMP for the Indian context would need to address several specific features of the Indian political environment. The five-hundred-and-forty-three Lok Sabha constituencies could be retained as the constituency half of the system, with an equivalent number of party-list seats allocated to bring the overall result into proportionality. The threshold could be set at a level that prevents excessive fragmentation while maintaining adequate representation for significant regional parties: a threshold of three to four percent of the national vote, with an

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alternative of a specified number of constituency seats, would be a reasonable starting point for deliberation.

The proportional representation of women, which is far better in PR systems than in FPTP systems (the comparative research on this is consistent and robust), would be an additional benefit: a constitutional requirement of alternating gender positions on party lists would effectively mandate the election of a significant proportion of women to the party-list component of the legislature.

11.2 Constitutional Requirements for Political Parties

The constitutional vacuum regarding political parties needs to be filled with provisions that require the following.

First, genuine internal democracy: political parties that wish to participate in elections and receive public financing must demonstrate, to an independent electoral commission, that their leadership and candidate selection processes are governed by rules providing for competitive election, rather than by family succession or leadership appointment. The specific requirements for internal democracy can be elaborated in legislation, but the constitutional mandate must be clear.

Second, comprehensive financial transparency: political parties must publicly disclose all income and expenditure on a real-time basis, with specific disclosure of all individual and corporate donations above a specified threshold. The disclosure must be made through a publicly accessible online database maintained by the Election Commission, not merely through self-reported filings that may be inaccurate and are difficult to verify.

Third, public financing: a system of public financing of political parties and election campaigns, based on electoral performance and conditional on compliance with transparency requirements, would reduce the structural dependence of parties on large private donors and would create more equal competitive conditions among parties of different financial resources. Public financing does not eliminate the influence of money in politics: it reduces the most distorting forms of that influence.

Fourth, criminal disqualification: the constitution should provide for the disqualification from candidacy of any person against whom a court has framed charges for specified serious offenses, subject to appropriate due process protections, until those charges are resolved. The current system, which allows persons with multiple serious pending charges to contest and win elections, is a constitutional scandal.

11.3 Constitutional Requirements for Judicial Accountability

The collegium system of judicial appointments, which has been criticized for opacity, for homogeneity, and for the potential influence of personal connections and political relationships on appointments, needs to be replaced by a genuinely transparent and accountable process that

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maintains judicial independence from political appointment while creating public accountability for the composition and conduct of the judiciary.

A "Judicial Appointments Commission" model, along the lines of the UK's Judicial Appointments Commission or Canada's Commissioner for Federal Judicial Affairs, would involve a diverse committee including both judicial and non-judicial members (with the non-judicial members appointed through transparent processes that include parliamentary confirmation), operating under public procedural rules and making appointment decisions that are reasoned and publicly explained.

The impeachment process for Supreme Court and High Court judges, which has never successfully completed in seventy-five years of the Republic, needs to be reformed to create an effective mechanism of accountability for serious misconduct, while maintaining protections against the political use of impeachment as a tool of executive pressure on the judiciary. A specialized judicial accountability tribunal, with jurisdiction to investigate complaints against judges and to recommend to Parliament in cases of proven misconduct, would provide a middle path between the current toothless system and a politically controlled removal mechanism.

11.4 A New Constitutional Settlement for Federalism

The quasi-federal character of the Indian constitutional order, which has enabled the systematic subordination of state governments to central political control, requires fundamental constitutional reconstitution to create genuine federalism appropriate for the diversity of India's political communities.

The specific reforms required include the following.

The Governor's office should be abolished and replaced by a directly elected state head (on the American model) or by a state council with ceremonial functions only, appointed by the state legislative assembly rather than by the central government.

The fiscal federal arrangement should be reformed to give states genuinely independent tax-raising powers sufficient to fund their constitutional responsibilities, reducing the degree of fiscal dependence on central transfers that currently gives the Centre inappropriate leverage over state governmental choices.

The Union List should be revised to eliminate or restrict several entries that give the Centre power to legislate in areas that properly belong to state jurisdiction in a genuinely federal system, and the Residual Powers, currently vested in the Centre, should be allocated to the states, as in the American and Australian constitutional models.

The President's Rule provision under Article 356 should be significantly tightened or repealed. The post-S.R. Bommai v. Union of India (1994) jurisprudence, which requires floor tests and limits the discretion of the Governor to recommend President's Rule, represents a significant judicial improvement, but the constitutional text should be amended to require, as a precondition

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for President's Rule, a resolution of both houses of Parliament rather than merely presidential proclamation on ministerial advice.

CONCLUSION TO PART TWO: THE CITIZEN, THE CONSTITUTION, AND THE CHOICE AHEAD

Part Two has traced the pathologies of the Indian constitutional order from the formal mechanics of the electoral system through the internal dynamics of political parties, through the financial corruption of democratic competition, through the concentration of power in the executive and the corresponding weakness of legislative accountability, through the systematic victimization of the poor, the farmer, the tribal community, the religious minority, and the political dissenter, through the foreign policy consequences of a constitutional framework without democratic accountability, through the continuing misuse of colonial legal instruments against the people who were supposed to be liberated from colonial rule, and through the theoretical frameworks that allow us to name, analyze, and critique these pathologies with intellectual precision.

The picture that emerges is of a constitutional order that has profoundly failed the promise of "We, the People of India." It has failed the poor, for whom constitutional rights are formal rather than substantive. It has failed the marginalized, whose constitutional protections are regularly violated with impunity. It has failed the farmer, whose livelihood remains precarious despite constitutional commitments to rural welfare. It has failed the tribal community, whose land rights remain insecure despite constitutional protections. It has failed the religious minority, whose constitutional equality is increasingly compromised by majoritarian political pressure. It has failed the citizen who wishes to speak, to organize, to protest, and to demand accountability, because the constitutional protections for dissent are being systematically eroded by the same legal instruments the colonial state used to silence the independence movement.

But the picture also points toward what a different constitutional order could look like. Not an imaginary utopia, but a constitutionally serious, comparatively informed, theoretically grounded proposal for a constitutional order that would actually deliver on the promises that the current constitution makes and breaks. An order in which every vote counts and every vote is counted accurately. An order in which political parties are genuinely democratic organizations rather than family businesses or authoritarian personality cults. An order in which money cannot buy political power on the scale that it currently does. An order in which the executive is accountable to the legislature and through the legislature to the people. An order in which fundamental rights are enforced for all citizens, not as the privilege of those who can afford a Supreme Court advocate. An order in which the states have genuine autonomy within a genuine federation. An order in which the constitutional protections for tribal rights, for dalit dignity, for women's equality, for religious freedom, and for the rights of the poor are implemented with the seriousness and the resources that constitutional commitment requires.

This is not a modest agenda. It requires constitutional courage of a kind that the Indian political class has rarely demonstrated. It requires the willingness of those who benefit from the current constitutional arrangements to accept the constraints and the accountability that a genuinely

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democratic order imposes. It requires the mobilization of civil society, of the legal profession, of academia, and of the citizenry to demand the constitutional reform that the moment requires.

The students and scholars who read this textbook are the people from whom that mobilization must come. Constitutional change does not come from governments that benefit from the current arrangement: it comes from the organized, informed, and persistent demand of citizens who understand what constitutional democracy requires and who refuse to accept the gap between constitutional promise and constitutional reality as the permanent and natural state of things. It comes from the lawyers who file the cases, from the academics who build the arguments, from the activists who organize the protest, from the journalists who document the violations, and from the voters who, armed with genuine constitutional understanding, refuse to ratify arrangements made in their name but against their interests.

The constitutional project in India is not complete. It was never complete. Every generation of citizens has the constitutional responsibility to examine the constitutional order they have inherited, to maintain what is valuable, and to reform what is harmful. In India in April 2026, that responsibility has a particular urgency that this textbook has attempted to convey.

The Constitution belongs to the people. And the people have the constitutional right, the democratic responsibility, and the urgent practical need to demand that it be made worthy of them.

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End of Part Two

The next Part, Part Three, will examine the constitutional framework of the judiciary in depth: the question of judicial appointments, judicial accountability, judicial pendency, the collegium system, the relationship between the higher judiciary and the political executive, and the specific question of how the Supreme Court of India has, at different moments in its history, both advanced and retreated from its constitutional function as the guardian of constitutional rights against state power. It will examine in depth the cases in which the courts have failed the people they were supposed to protect, and the theoretical and comparative models for a judiciary that is genuinely independent, genuinely accountable, and genuinely accessible to all citizens rather than only to those who can afford it.

About This Part

Part Two continues the critical-legal studies framework established in Part One. The analysis is not partial to any political party or ideological tendency: the pathologies documented are the pathologies of the constitutional order as such, not of any single government or political formation. Every government since independence, of every political persuasion, has exploited the structural vulnerabilities of the constitutional order in ways that served the interests of those in power at the expense of the majority. The current government has done so more systematically and more effectively than most of its predecessors, but the structural vulnerabilities it exploits are constitutional inheritance, not creation.

The constitutional reform agenda sketched in the final chapters of this Part is offered as a contribution to democratic deliberation rather than as a technical prescription. The specific proposals require elaboration, modification, and improvement through precisely the kind of participatory constitutional deliberation that the analysis shows to be lacking in the current order. The argument of the textbook is not for a particular constitutional outcome but for a genuinely democratic process for determining that outcome: a process in which "We, the People of India" can finally, for the first time in the Republic's history, exercise the constituent power that the Preamble claims they have always held.

PART THREE: THE MACHINERY OF SUBJUGATION

Executive Dominance, Criminal Law as Weapon, the Architecture of Political Suppression, Constitutional Corruption, Social Devastation, and the Case for a New Constitutional Settlement

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PREFACE TO PART THREE

Parts One and Two of this textbook laid out the foundational arguments of this work. Part One traced the colonial genome of the Indian Constitution, its structural debt to the Government of India Act of 1935, its inheritance of imperial administrative logic, its asymmetric treatment of civil and political rights versus social and economic rights, and the troubling character of the federal arrangement that the framers chose to call a union rather than a federation. Part Two examined the jurisprudence of sovereign fragility through the lens of the basic structure doctrine, analyzed the Emergency of 1975 as the defining constitutional catastrophe that illuminated every structural weakness in the system, and examined the constitutional silences that have proven as consequential as the provisions that exist.

Part Three is where the argument becomes most direct, most urgent, and most uncomfortable. We are no longer tracing historical DNA or examining theoretical jurisprudential puzzles. We are examining the living consequences of the constitutional order as it exists and operates in the twenty-first century, in 2025 and 2026, in a country where the judicial system holds nearly nine thousand people in pretrial detention under anti-terror laws with a real conviction rate of approximately two percent, where elected Governors of states routinely act as political agents of the central government against the populations they are constitutionally obligated to serve, where the criminal law has been transformed from an instrument of justice into an instrument of political management, where the constitution's language of equality coexists with a caste system that continues to structure every dimension of economic and social life, where the language of secularism covers a state that has moved with remarkable constitutional facility toward religious majoritarianism, and where the promise of free and fair elections is increasingly undermined by the structural advantages that the constitutional and legal framework provides to those who hold central power.

These are not aberrations. They are not policy failures that a better government would correct. They are structural outcomes of a constitutional framework that concentrated power, insulated it from accountability, and built the formal vocabulary of democracy around a substantive architecture of domination. Understanding this requires going deep into the machinery: the executive apparatus, the criminal justice complex, the revenue and land law system, the police and intelligence architecture, the electoral financing structure, the media regulation framework, and the foreign policy apparatus. All of these are shaped by constitutional provisions and constitutional silences. All of them produce outcomes that disadvantage the majority of Indian citizens in systematic and predictable ways.

Part Three also takes up the argument for a new constitutional settlement. This is not the same as the argument for constitutional amendment, though amendments are urgently needed in the short term. The deeper argument is that a document of this age, this provenance, this structural character, built on colonial foundations for a largely rural, largely illiterate, deeply unequal post-colonial society, cannot, through however many amendments, become the appropriate constitutional framework for a country that is now the world's most populous democracy, the fifth largest economy, a nuclear-armed regional power, a country of extraordinary internal diversity, and a country whose citizens are increasingly demanding not merely procedural democracy but substantive justice and genuine popular sovereignty.

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The argument is made not in despair but in the conviction that clarity about diagnosis is the necessary precondition of genuine therapy.

CHAPTER ONE: THE EXECUTIVE LEVIATHAN - PRIME MINISTERIAL DOMINANCE AND THE HOLLOWING OF CONSTITUTIONAL ACCOUNTABILITY

1.1 The Parliamentary Executive and Its Transformation

The parliamentary system of government established by the Indian Constitution is, in formal constitutional terms, a system of responsible government. The executive is drawn from the legislature, responsible to it, and removable by it through a vote of no confidence. The Prime Minister holds office only for as long as she or he commands the confidence of the Lok Sabha. The Council of Ministers is collectively responsible to the Lok Sabha. The President is a constitutional head whose formal powers are exercised on the advice of the Council of Ministers. The system is designed, in principle, to ensure that executive power is continuously accountable to an elected legislature and, through the legislature, to the electorate.

This is the constitutional theory. The constitutional practice has been something substantially different, and understanding the gap between theory and practice is essential to any serious diagnosis of what is wrong with the Indian constitutional order.

The transformation of the parliamentary executive into what scholars have increasingly called a presidential prime ministership did not begin with the current government. It has been a long-term structural trend in Indian politics, accelerated by particular leaders but not created by any of them. The conditions for this transformation are embedded in the constitutional architecture itself.

The first condition is the constitutional concentration of appointment powers in the Council of Ministers, which means in practice in the Prime Minister. The Prime Minister recommends to the President the appointment of Cabinet ministers, governors, the chiefs of the armed forces, the chairman of the Union Public Service Commission, the Chief Election Commissioner, the Central Vigilance Commissioner, the Director of the Central Bureau of Investigation, the chairmen of regulatory agencies, the chairmen of finance commissions, the Attorney General, the Solicitor General, and a very large number of other significant positions. None of these appointments, with the partial exception of the Election Commission, is subject to parliamentary confirmation or to any process of independent scrutiny. They are made by the executive for the executive.

This appointment power creates the possibility of what scholars of the state call colonization, the systematic filling of ostensibly independent institutions with personnel loyal to or dependent upon the political leadership that appointed them. The colonization of the Indian state by the political executive has been a documented process that has accelerated significantly in recent decades. When the Central Bureau of Investigation is led by an officer who owes her or his appointment to the Prime Minister and who knows that her or his career advancement depends

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on the Prime Minister's satisfaction, the structural independence of the CBI from political direction is compromised by institutional design, not merely by individual character.

The second condition for prime ministerial dominance is the anti-defection law contained in the Tenth Schedule of the Constitution, added by the Fifty-Second Amendment in 1985. The anti-defection law provides that a member of a legislature who votes against the direction of her or his party on a vote of confidence or a money bill, or who abstains from such a vote against party direction, is liable to be disqualified as a member of the legislature. The law was enacted to address the phenomenon of political defection, in which legislators changed their party affiliation or voted against their party for personal financial gain. The intention was to stabilize governments and reduce the influence of what Indian political observers called aaya rams and gaya rams, the legislators who crossed the floor of the legislature repeatedly in search of individual advantage.

But the cure, in this instance, has been as bad as the disease it addressed. By making legislators legally obligated to vote with their party on critical matters, the anti-defection law has destroyed the possibility of genuine parliamentary accountability of the executive. A Prime Minister who commands a majority in Parliament can be entirely confident that no vote of no confidence will succeed against her or him, regardless of the actual conduct of the government, because the members of the governing party or coalition are legally prohibited from voting against the government. Parliamentary accountability, which is the constitutional mechanism of executive accountability in a Westminster system, has been rendered structurally inoperative by the Tenth Schedule.

The political consequence of this structural reality is that the Prime Minister, once she or he commands a parliamentary majority, is functionally unaccountable to Parliament for the duration of her or his term. The government can lose every parliamentary debate, can be confronted with the most damning evidence of policy failure or corruption, can face the most eloquent opposition arguments, and can continue in office with complete constitutional legitimacy because the anti-defection law ensures that the governing majority will hold through every vote. Parliament becomes, in this scenario, a forum for rhetoric rather than a mechanism of accountability.

The third condition for prime ministerial dominance is the constitutional provision relating to the dissolution of Parliament. Article 85 of the Constitution provides that the President may, on the advice of the Council of Ministers, prorogue and dissolve the Lok Sabha. This means that the Prime Minister, acting through the Council of Ministers, can advise the President to call early elections at any time. This power allows a Prime Minister who calculates that current conditions favor the governing party to time elections to maximize her or his partisan advantage, dissolving Parliament early when the government's popularity is high or when the opposition is in disarray, and thereby structurally advantaging the incumbent.

These three constitutional conditions, concentrated appointment powers, the anti-defection law, and the power to time elections, combine to create an executive that is constitutionally powerful in ways that go well beyond what the Westminster parliamentary model was designed to produce. They create conditions in which a Prime Minister who commands a parliamentary

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majority and who is willing to use these structural advantages decisively can govern in a manner that is much closer to elected authoritarianism than to parliamentary democracy.

1.2 The Architecture of Surveillance and Information Control

The Indian Constitution guarantees freedom of speech and expression under Article 19(1)(a). It guarantees the right to privacy as an emanation of the right to life under Article 21, a right confirmed by the Supreme Court's unanimous judgment in K.S. Puttaswamy v. Union of India in 2017. But the constitutional framework for information control and surveillance in India is structured in ways that substantially undermine these guarantees.

The telecommunications interception framework, established under Section 5(2) of the Indian Telegraph Act of 1885 and Rules 419 and 419A of the Indian Telegraph Rules, allows the central government and state governments to intercept telephone and electronic communications when satisfied that it is necessary or expedient in the interests of the sovereignty and integrity of India, the security of the state, friendly relations with foreign states, or public order, or for preventing incitement to the commission of an offense. The grounds for interception are extremely broad. The process of authorization is entirely executive, with no judicial oversight and no requirement to inform the person whose communications are being intercepted, even after the period of surveillance has ended.

The Pegasus affair of 2021, in which investigative reporting by an international consortium of journalists revealed that the phones of approximately three hundred Indian journalists, opposition politicians, business leaders, activists, and constitutional officials had been hacked using Israeli military-grade spyware, illuminated the surveillance architecture with particular clarity. The government refused to confirm or deny the use of Pegasus in a manner consistent with the constitutional obligation to be transparent with the citizens. The Supreme Court appointed a technical committee to investigate, but the government's non-cooperation significantly limited what the committee could establish.

What the Pegasus affair demonstrated is that the existing constitutional and legal framework for surveillance provides insufficient protection against the use of state intelligence resources for political purposes. The combination of broad statutory grounds for interception, entirely executive authorization processes, no judicial oversight requirement, no notification requirement, and a government unwilling to be transparent about its surveillance activities creates conditions in which the right to privacy and the right to free speech are subject to systematic erosion through surveillance without any effective constitutional remedy.

The situation has not improved since 2021. The Digital Personal Data Protection Act of 2023 and the DPDP Rules of 2025, which were intended to operationalize the constitutional right to privacy, contain sweeping exemptions for the state from the data protection obligations that apply to private actors. The government can process personal data for any state function without the consent requirements that apply to private entities. The state is exempted from many of the accountability mechanisms established by the Act. The Data Protection Board, established to adjudicate complaints, is an executive body whose members are appointed by the government, creating structural questions about its independence.

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1.3 The Electoral Bond Regime and the Constitutional Architecture of Money Power

The relationship between money and political power is one of the most consequential and least examined constitutional questions in Indian public life. The Constitution guarantees free and fair elections under Article 324, which vests the superintendence, direction, and control of elections in the Election Commission of India. The Supreme Court has held that free and fair elections are a basic structure of the Constitution. But the constitutional framework for the financing of elections and political parties is, or rather was until very recently, deeply inadequate to protect the integrity of the electoral process from the corrupting influence of money.

The electoral bond scheme, introduced by the Finance Act of 2017 and operationalized through amendments to the Representation of the People Act and the Income Tax Act, allowed any person or corporation to purchase bonds from the State Bank of India and donate them to political parties. The donations were anonymous: the donor's identity was not required to be disclosed publicly, and the receiving party was not required to disclose the identity of its donors in connection with bond transactions. The bonds were available in denominations from one thousand rupees to one crore rupees, and there was no upper limit on the total that any entity could purchase.

The Supreme Court struck down the electoral bond scheme in February 2024 in Association for Democratic Reforms v. Union of India, holding that the scheme violated the voters' right to information about the sources of political funding, that the anonymity of donations was constitutionally impermissible to the extent it prevented citizens from knowing who was funding the parties they were asked to vote for, and that the removal of caps on corporate donations eliminated protections against the capture of political parties by large business interests.

The data that emerged after the Supreme Court's order, when the State Bank of India was required to disclose bond purchase and redemption information, was revelatory. It showed that a significant proportion of the largest electoral bond purchases had been made by companies that were at the time under investigation by the Enforcement Directorate, the Income Tax Department, or the Central Bureau of Investigation, agencies whose decisions to proceed with or withdraw investigations and prosecutions are made by the executive government. The correlation between investigation status and large political donations raised what critics described as a structural system of extortionate political financing, in which companies under regulatory scrutiny made large donations to the governing party as a form of protection, an arrangement that, if accurately described, would constitute a constitutional violation of the most serious kind.

The government denied these characterizations. The constitutional issue, however, is not resolved by the striking down of the electoral bond scheme, because the underlying constitutional problem, the absence of any substantive constitutional regulation of the relationship between money and political power, predated the bonds and persists after their abolition. A constitution that does not require transparency in party financing, does not cap political donations, does not regulate campaign expenditure in relation to the actual costs of mass political communication in a digital age, and does not establish effective independent oversight of electoral finance is a constitution that provides structural support for the domination of democratic politics by economic power.

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1.4 The One Nation One Election Proposal and the Assault on Federal Democracy

Among the most significant constitutional proposals of recent years is the proposal for simultaneous elections to the Lok Sabha and all state legislative assemblies, a proposal generally referred to in Indian public discourse by the acronym ONOE. The proposal was advocated by a high-level committee chaired by former President Ram Nath Kovind, whose report was presented to the government in March 2024, and a constitutional amendment bill to implement it was introduced in Parliament in December 2024, before being referred to a joint parliamentary committee.

The ONOE proposal has been presented by its proponents as a mechanism to reduce the costs of elections, to relieve the administrative burden of frequent elections on government machinery, and to reduce the disruption caused by the imposition of the Model Code of Conduct, which restricts governmental activity during election periods, on the continuity of governance. These are not entirely frivolous considerations, and the transaction costs of India's enormously frequent electoral cycle are genuinely significant.

But the constitutional critique of ONOE is powerful and goes to the heart of what kind of democracy India aspires to be.

First, the ONOE proposal would require a massive constitutional amendment that would override state governments' normal right to govern for their constitutional term. A state assembly elected for five years has a democratic mandate for five years. If simultaneous elections require all assemblies to be dissolved and re-elected on the same cycle, then state assemblies that do not align with the national cycle must either have their terms artificially extended or artificially shortened. Either option involves overriding the democratic mandate of elected state governments in ways that fundamentally compromise the autonomy of states as constitutional actors.

Second, the simultaneous conduct of national and state elections has demonstrated, in comparative electoral research, to systematically advantage national parties over regional parties. When voters are asked to cast votes for both their state assembly and their national Parliament on the same day, a phenomenon called coattail voting tends to occur, in which voters influenced by their presidential or prime ministerial preference extend that preference to their state vote. In a country as diverse as India, where regional parties represent the genuine political preferences of specific linguistic, cultural, and economic communities, the suppression of regional political autonomy through simultaneous elections would represent a structural centralization of political power at the expense of the federal democratic diversity that is one of the Constitution's formal commitments.

Third, the ONOE proposal, if implemented, would effectively insulate the central government from electoral accountability for five years at a stretch, since all elections would be concluded simultaneously and the next electoral accountability moment would be five years away. Governments that commit serious policy errors or governance failures after an election would face no mid-term electoral consequences. The anti-accountability implications of this are serious.

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The One Nation One Election proposal remained under review as of 2025, with federal balance concerns delaying its enactment despite it having been proposed through a constitutional amendment bill. Usthadian The constitutional questions it raises are not merely academic but go to the structural character of Indian democracy and its commitment to genuine federal self-governance.

CHAPTER TWO: THE CRIMINAL LAW COMPLEX - HOW CONSTITUTIONAL PROVISIONS HAVE BEEN WEAPONIZED AGAINST THE PEOPLE

2.1 The Historical Architecture of Colonial Criminal Law and Its Constitutional Continuity

The criminal law of India, as it existed at independence and as it has been applied since, is in its foundational architecture a colonial creation. The Indian Penal Code of 1860, the Code of Criminal Procedure, the Indian Evidence Act, all were drafted by British jurists, most famously Thomas Babington Macaulay, for the express purpose of managing a colonized population. They were not designed to protect the rights of subjects. They were designed to enforce the authority of a colonial state that had no obligation of accountability to those it governed. The categories of crime they defined, the procedures they established, the allocation of burdens they created, all reflected the needs of an administrative state that needed to maintain order over a population that had not consented to its rule.

The Constitution of India, which came into force in 1950, did not replace this criminal law framework. It retained it, subject only to the requirement that it comply with the fundamental rights guarantees of Part III. The criminal law system of independent India was, in its essential architecture, the criminal law system of colonial India, operating under a new constitutional umbrella.

This is not merely a historical point. It has profound consequences for the relationship between the criminal justice system and the citizens whose rights it is supposed to protect. A criminal procedure code designed for the management of a colonized population reflects different assumptions about the presumption of innocence, the right to liberty pending trial, the right to legal representation, the standard of proof required for arrest and detention, and the relationship between the state and the individual defendant from those that characterize a criminal procedure code designed for a free people.

The Bharatiya Nyaya Sanhita of 2023, the Bharatiya Nagarik Suraksha Sanhita of 2023, and the Bharatiya Sakshya Adhiniyam of 2023, which replaced the IPC, CrPC, and Evidence Act respectively and came into force in July 2024, represent the current government's effort to replace the colonial-era criminal codes with a set of laws that use Hindi rather than English nomenclature and that make various substantive changes to the criminal law framework. The government presented this reform as a decolonization of the criminal law. Critics have argued that the reform is largely cosmetic: the new codes retain the essential structure and many of the

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specific provisions of the colonial codes, while introducing some changes that actually extend executive power and reduce judicial oversight rather than genuinely protecting citizens' rights.

The Supreme Court of India has been re-examining the constitutional validity of sedition alongside newer provisions like Section 152 of the Bharatiya Nyaya Sanhita of 2024, with this debate gaining urgency amid growing reliance on the Unlawful Activities Prevention Act to curb dissent and raise concerns about civil liberties, free speech, and constitutional morality. Universal Group Of Institutions The renaming of sedition under Section 152 of the BNS has not resolved the constitutional problem it represents. Critics have argued that the new provision is framed in terms even broader and vaguer than the original Section 124A, criminalizing acts that endanger the sovereignty, unity, and integrity of India without any clear threshold of the degree of danger required.

2.2 The UAPA and the Constitutional Transformation of Dissent into Terrorism

The Unlawful Activities (Prevention) Act, first enacted in 1967 and significantly amended in 2004, 2008, 2012, and 2019, represents the most consequential and most abused piece of legislation in the contemporary Indian constitutional order. Understanding the UAPA requires understanding both its text and its practice, and the gap between them is a gap of constitutional significance.

The UAPA was originally enacted to deal with secessionist organizations and movements that sought to detach territory from India. Its original legislative purpose was the suppression of movements that advocated secession or the disruption of India's territorial integrity. This was a legitimate governmental purpose, and the original act, whatever its deficiencies, was at least directed at a recognizable category of genuinely threatening activity.

But through successive amendments, the UAPA has been transformed from an anti-secessionist instrument into a general-purpose political management tool of extraordinary breadth and destructive power. The 2004 amendment incorporated most of the provisions of the Prevention of Terrorism Act, which the then-incoming Congress government had promised to repeal, into the UAPA, ensuring their survival under a different statutory name. The 2008 amendment, enacted in the aftermath of the Mumbai attacks, strengthened the provisions relating to bail, requiring courts to deny bail if there were reasonable grounds to believe that the case against the accused was prima facie true, a standard that reversed the normal burden of proof and made bail effectively unavailable in most UAPA cases. The 2019 amendment extended the power to designate individuals, not merely organizations, as terrorists, allowing the executive to brand a named person as a terrorist on an administrative decision rather than through a judicial process.

The data on UAPA enforcement is damning in every relevant dimension.

According to Ministry of Home Affairs data, police and investigative agencies arrested 8,947 people under the UAPA between 2018 and 2022, but only 252 were convicted during that period, a conviction rate of less than three percent. Civicus Monitor A former Supreme Court judge has noted that the UAPA has a realistic conviction rate of approximately two percent, and that the

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law creates situations where a case may fail entirely but the accused has suffered eight to twelve years of incarceration, making the process itself the punishment.

Between 2019 and 2021, more than 2,300 people were arrested under UAPA in Kashmir alone. Among those still in jail under UAPA charges were well-known democratic rights activist Khurram Parvez, journalist Aasif Sultan, who was rearrested immediately after being released from five years of imprisonment in February 2024, and politician Engineer Rashid, who won the Lok Sabha elections from the Baramulla constituency while continuing to be in prison. The Wire

A total of 24,134 people were accused in 5,127 cases under UAPA between 2016 and 2020, according to information provided in Parliament, and as of 2020, there were 6,482 undertrial prisoners under UAPA in various jails in India, possibly the largest peacetime population of undertrial prisoners under an anti-terror law anywhere in the world. The Wire

The constitutional analysis of the UAPA begins with Article 21, the right to life and personal liberty. The UAPA's bail provisions, which make bail presumptively unavailable for persons charged under the act, are constitutionally problematic under any serious application of the right to personal liberty. The Supreme Court has held, in Maneka Gandhi and its progeny, that deprivation of personal liberty must be through a procedure that is fair, just, and reasonable. A procedure that denies bail to a person who has not been convicted of any offense, on the mere ground that the prosecution case appears prima facie true, is not a procedure that is fair by any serious constitutional standard.

The UAPA also raises serious questions under Article 19(1)(a) (freedom of speech), Article 19(1)(b) (freedom of peaceful assembly), and Article 19(1)(c) (freedom of association). The act's provisions relating to unlawful activities are broadly enough framed to include forms of speech and association that would, in any genuinely rights-protective constitutional order, be constitutionally protected. The designation of individuals as terrorists on executive determination, without judicial process, raises acute due process concerns under Articles 14 and 21. The use of the UAPA against journalists, scholars, activists, and political organizers, documented extensively by human rights organizations and by the data on arrests and acquittals, raises fundamental questions about whether the law is being applied in accordance with its stated purpose.

Under the UAPA, courts assessing bail are required only to see whether accusations appear prima facie true, not whether guilt is established, which reverses the principle of innocent until proven guilty and leads to prolonged incarceration. As seen in cases like those of Sharjeel Imam and Umar Khalid, sedition charges faded but the UAPA became the primary anchor of incarceration, meaning that punishment precedes proof, chilling dissent far more effectively than sedition ever did. Universal Group Of Institutions

The jurisprudential analysis of the UAPA must engage with the theory of constitutional morality developed by the Supreme Court in a series of judgments including Navtej Johar v. Union of India and Joseph Shine v. Union of India. Constitutional morality, as the Court has elaborated it, is not the popular morality of the majority but the morality that is inherent in the constitutional text and structure, a morality of rights, dignity, equality, and freedom. The UAPA, as applied in

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practice, is in fundamental tension with constitutional morality so understood. It is applied disproportionately against the already marginalized, the Muslim, the Dalit, the Adivasi, the student, the journalist, the labor organizer. It is applied to protect the interests of the powerful against the challenges of the powerless. This is not an application of the constitutional morality of a document that begins with justice, liberty, equality, and fraternity. It is the very antithesis of that morality.

2.3 The Armed Forces Special Powers Act and the Constitutional Suspension of Ordinary Law

The Armed Forces (Special Powers) Act of 1958, and its Jammu and Kashmir variant, represent a category of constitutional problem that is in some ways even more fundamental than the UAPA, because the AFSPA does not merely suspend constitutional guarantees for those suspected of offenses but suspends constitutional law for an entire geographic territory and its entire population.

The AFSPA authorizes officers of the armed forces to use force, including lethal force, kill any person on reasonable suspicion that they are about to commit or are committing a cognizable offense in disturbed areas, to arrest without warrant, and to search premises without warrant. It provides immunity from prosecution to members of the armed forces for acts done in the exercise of powers under the Act without the prior sanction of the central government. In practice, since the central government has never granted the sanction necessary to prosecute a member of the armed forces for actions under the AFSPA, this immunity is effectively absolute.

The AFSPA has been in operation in the northeastern states of India and in Jammu and Kashmir for decades. The human rights record of armed forces operations in these areas, documented by the Supreme Court, by human rights organizations including Human Rights Watch and Amnesty International, by the Justice Verma Committee, by the National Human Rights Commission, and by the families of the thousands of persons who have been killed in extrajudicial circumstances in these areas, constitutes one of the gravest ongoing constitutional crises in Indian history.

The Supreme Court addressed the constitutionality of the AFSPA in Naga People's Movement of Human Rights v. Union of India in 1998, and the Court upheld the Act with certain conditions, including that the Army should not act in ways that are not authorized by law and that the power of the central government to withdraw the Act was a check on its misuse. But the conditions laid down by the Court have not been systematically enforced. The extrajudicial killings documented in Manipur in 2013, in which the Supreme Court in Extra Judicial Execution Victim Families Association v. Union of India in 2016 found that the armed forces had killed persons in fake encounters, that these killings were extra-judicial, and that the AFSPA immunity did not extend to clearly illegal acts, have not resulted in prosecutions of the personnel involved.

The constitutional analysis of the AFSPA must begin with the recognition that its operation represents a territorial suspension of constitutional governance. In AFSPA areas, the constitutional framework for the relationship between the citizen and the state is suspended and replaced with a military administration framework. Citizens in these areas do not have, in practical terms, the fundamental rights that the Constitution guarantees. They cannot effectively

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assert the right to life against lethal state action because the prosecution of state actors for such action is structurally blocked by the immunity provisions. They cannot effectively assert the right against arbitrary arrest because the AFSPA authorizes arrest without the procedural requirements of ordinary criminal law. The constitutional promise of a republic in which all citizens are equal before the law is conspicuously and structurally violated in AFSPA areas.

2.4 The National Investigation Agency and the Centralization of Prosecutorial Power

The National Investigation Agency, established by the National Investigation Agency Act of 2008, is a central agency with jurisdiction to investigate and prosecute offenses under a specified list of statutes, including the UAPA, offenses against atomic energy facilities, offenses under the Arms Act, and, after subsequent amendments, offenses related to human trafficking, counterfeit currency, and explosives. The NIA can investigate any case in any state in India, regardless of whether the state government consents, and it can take over cases that state police forces are already investigating.

The constitutional significance of the NIA lies in its relationship to the federal structure. The police and criminal investigation of ordinary offenses is constitutionally a state subject. States maintain their own police forces, their own criminal investigation departments, their own prosecution services. This allocation of criminal law enforcement to the states reflects the constitutional logic that state governments are accountable to the populations within their territories for the maintenance of law and order in those territories.

The NIA represents a significant departure from this constitutional logic. It gives the central executive the power to take over criminal investigations and prosecutions in any state, on the basis of the NIA's own assessment that the case falls within its jurisdiction. This gives the central government an enormous instrument of political power: the ability to ensure that politically sensitive criminal prosecutions, particularly those involving persons accused under UAPA or related statutes, are conducted by a centrally controlled agency rather than by state agencies that may be controlled by opposition governments.

The use of the NIA has been criticized extensively, and by courts as well as civil society, for patterns of action that appear to reflect political priorities rather than law enforcement priorities. Cases involving persons perceived as critics of the central government have been taken over by the NIA and prosecuted with great vigor. Cases involving persons perceived as supporters or beneficiaries of the central government's political project have, in some documented instances, been allowed to languish or have been resolved in ways favorable to the accused. This is not to say that the NIA is uniformly politically motivated, but the structural conditions for political motivation are built into its design by the absence of any effective independent oversight of its prosecutorial decisions.

2.5 The Prison System and the Constitutional Failure of Rehabilitation

The Indian prison system, the largest consequence of the criminal justice apparatus, is itself a site of profound constitutional failure that rarely receives the attention it deserves in constitutional discourse. Prisons are governed by state governments under Entry 4 of the State List (prisons,

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reformatories, Borstal institutions), but the Model Prison Manual issued by the Bureau of Police Research and Development and the Prisons Act of 1894, both reflect the colonial-era understanding of imprisonment as punishment rather than rehabilitation.

The prison population of India has grown dramatically in recent decades. As of the most recent data, India's prisons hold more than five hundred thousand inmates, of whom approximately three-quarters are undertrial prisoners who have not been convicted of any offense. This undertrial rate reflects the structural failure of the criminal justice system: the backlog of cases before the courts is so severe that persons arrested and charged often spend years in pretrial detention, waiting for their trial to begin. For persons charged under the UAPA, the special bail provisions mean that this detention extends for even longer periods.

The constitutional failure here is multiple. The right to a speedy trial, recognized as an element of Article 21 by the Supreme Court, is systematically violated. The right to be presumed innocent until proven guilty, which is both a constitutional value and a requirement of international human rights law to which India is a party, is violated in practice by a system that incarcerates the unconvicted for years. The right to dignity guaranteed by Article 21, interpreted in the landmark judgment of Sunil Batra v. Delhi Administration to extend to prison conditions, is violated in prisons where overcrowding, lack of basic sanitation, inadequate medical care, and endemic violence are the norm rather than the exception.

The constitutional remedy for these failures is clear: massive investment in the criminal justice system, reform of bail law, reform of the prison system to make it genuinely rehabilitative rather than punitive, and most fundamentally, a reform of the substantive criminal law to decriminalize a large range of activities that are currently criminal but whose criminalization serves no genuine public interest and simply expands the pool of persons who can be imprisoned.

CHAPTER THREE: THE CONSTITUTIONAL ARCHITECTURE OF RELIGIOUS MAJORITARIANISM - HOW SECULARISM HAS BEEN HOLLOWED FROM WITHIN

3.1 Secularism in the Indian Constitutional Framework: Text, Interpretation, and Betrayal

The word "secular" was inserted into the Preamble of the Indian Constitution by the Forty-Second Amendment of 1976, during the Emergency. Before that amendment, the Constitution did not use the word, but the secular character of the state was nonetheless regarded by the Supreme Court and by constitutional scholars as a fundamental feature of the constitutional framework, derived from the combined reading of the provisions guaranteeing freedom of religion, prohibiting discrimination on grounds of religion, and establishing a state that would not use religion as a basis of its law.

The Indian conception of secularism has always been different from the French conception of laicite, which requires the complete exclusion of religion from public life. Indian secularism has been described, by the Supreme Court in S.R. Bommai v. Union of India and in subsequent

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cases, as a doctrine of equal respect for all religions, or sometimes as principled distance, meaning that the state maintains an equal relationship with all religious communities rather than adopting an entirely religion-blind stance. This conception, sometimes called Sarva Dharma Samabhava (equal respect for all faiths), is distinctive and has its own intellectual tradition rooted in the syncretic religious culture of the subcontinent.

But this distinctive conception of secularism has proven, in practice, to be an enormously flexible and ultimately weak doctrine. The "equal respect" or "principled distance" formulation provides insufficient guidance when the state must choose between the demands of different religious communities that are in conflict with each other or that conflict with general laws of equal applicability. And in a country where one religious community, the Hindus, constitutes approximately eighty percent of the population, the political incentive structure consistently favors policies that appeal to Hindu religious sentiment at the expense of equal treatment of minority religious communities.

The constitutional history of communal politics and the law is long and complex. In the early decades of independent India, the Congress party's approach to secularism was characterized by a combination of formal legal equality and informal deference to the political preferences of the majority community in matters perceived as affecting religious sentiment, a combination that its critics from the Left and from the Muslim community described as pseudo-secularism or selective secularism even at the time. The opening of the Babri Masjid lock in 1986, authorized by the Rajiv Gandhi government to placate Hindu communal sentiment after the Supreme Court's judgment in the Shah Bano case, is the paradigmatic example of this approach: the sacrifice of constitutional principles of equality and secularism on the altar of majoritarian political calculation.

The demolition of the Babri Masjid by a mob in December 1992 and the communal violence that followed represented the most catastrophic failure of the constitutional order's commitment to secularism. The Constitution, which guarantees freedom of religion and requires the state to protect religious sites, proved entirely inadequate to prevent the destruction of a four-hundred-year-old mosque by a politically organized mob, in the presence of state police who did not prevent it and despite a Supreme Court order that had required the central government to protect the structure.

The legal resolution of the Ayodhya dispute in the Supreme Court's judgment in M. Siddiq v. Mahant Suresh Das in 2019 has been extensively analyzed and extensively criticized by constitutional scholars. The Court held that the disputed site should be given to the Hindu parties for the construction of a temple, while directing the government to provide an alternative plot of land for the construction of a mosque. The legal reasoning of the judgment was careful and multi-layered, but its critics argued that the outcome, delivering the site of a demolished mosque to the religious community whose members had demolished it, was a constitutional ratification of the consequences of a majoritarian act of violence, one that sent a signal about the limits of constitutional protection for minority religious property in India.

3.2 The Citizenship Amendment Act and the Constitutional Encoding of Religious Discrimination

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The Citizenship (Amendment) Act of 2019, which amends the Citizenship Act of 1955, provides an expedited path to Indian citizenship for members of six specified religious minorities (Hindus, Sikhs, Buddhists, Jains, Parsis, and Christians) who are persecuted in three specified Muslim-majority neighboring countries (Afghanistan, Pakistan, and Bangladesh) and who have been in India since before December 31, 2014. It explicitly excludes Muslims from this provision.

The constitutional challenge to the CAA is grounded in Article 14, which guarantees equality before the law, Article 15, which prohibits discrimination on grounds of religion, and the secularism provisions of the Constitution as interpreted by the Supreme Court. The argument is that the use of religion as an explicit criterion for a statutory benefit, specifically citizenship, is a form of religious discrimination that is constitutionally impermissible.

The government's defense of the CAA argues that it does not take away citizenship from any existing citizen, that it merely creates an expedited path for a specified class of persons, that the exclusion of Muslims from the list of beneficiaries is justified by the fact that they are members of the majority religion in the three neighboring countries and are therefore not persecuted on religious grounds in those countries in the same way that non-Muslim minorities are, and that the intelligible differentia test of Article 14 is satisfied by this classification.

The constitutional critique of this defense is that the test of intelligible differentia cannot be satisfied when the differentia is religious identity itself, because Article 15 explicitly prohibits discrimination on grounds of religion as a constitutional prohibition that operates independently of the general equality guarantee of Article 14. A classification that uses religious identity as its operative criterion is constitutionally problematic under Article 15 regardless of whether it might satisfy the less demanding intelligible differentia test of Article 14.

The Supreme Court has had the constitutional validity of the CAA under challenge since shortly after its enactment. As of 2025, the Court had still not decided the constitutional validity of the CAA, despite receiving over two hundred petitions challenging it. This delay, which is unprecedented for a matter of such constitutional significance, has itself become a subject of constitutional concern: the power of the courts to review legislation is meaningless if the courts take years or decades to exercise it, during which time the legislation continues to operate and its effects continue to accumulate.

3.3 The Waqf Amendment Act and the Constitutional Erosion of Minority Religious Autonomy

The Waqf (Amendment) Act of 2025 introduced significant administrative reforms in Waqf Boards, enabling the inclusion of non-Muslim experts, digital surveys, and stricter action against encroachment, while simultaneously repealing the Mussalman Wakf Act of 1923 as outdated. Usthadian

The constitutional analysis of the Waqf Amendment Act requires engagement with Article 26 of the Constitution, which guarantees every religious denomination the right to manage its own affairs in matters of religion and to manage its own property in accordance with law. The right to manage religious property is, under Article 26(d), a fundamental right of religious

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denominations. The imposition of non-Muslim members on the governing bodies of Waqf boards, which are exclusively Muslim religious institutions managing exclusively Muslim religious endowments, raises a serious question about whether the state has interfered with the right of the Muslim community to manage its own religious property through institutions of its own choosing.

The government's defense is that Waqf boards manage enormous amounts of property, that their governance has been marked by corruption and mismanagement, and that the reforms are intended to improve governance rather than to interfere with religious autonomy. These defenses might be persuasive if equivalent administrative interventions were being imposed on the governance of Hindu religious endowments, Christian churches, Sikh gurdwara committees, or other religious institutions. The constitutional problem is not merely the content of the reform but the selectivity of its application: a measure applied specifically and exclusively to the religious institutions of a minority community, in the context of an ongoing political project that has consistently disadvantaged that community, raises questions about discriminatory intent that cannot be dismissed by invoking administrative efficiency.

The constitutional and jurisprudential framework for evaluating the Waqf Amendment Act includes the doctrine of reasonable classification under Article 14, the specific religious freedom guarantees of Articles 25 and 26, the right to property protection of Article 300A, and the principles of natural justice and due process under Article 21. It also includes the comparative constitutional literature on the treatment of religious minorities under constitutional frameworks, literature that consistently identifies the selective application of regulatory burdens to minority religious institutions as a marker of unconstitutional discrimination.

3.4 The Pattern of Majoritarian Constitutional Change and Its Implications for Democracy

The individual legal measures discussed in the preceding sections, the CAA, the Waqf Amendment, the abrogation of Article 370, the electoral bond scheme, the UAPA expansions, the NIA Act, are each controversial in their own right. But their significance for constitutional analysis is heightened when they are understood as elements of a pattern rather than as isolated legislative choices.

The pattern is one of systematic constitutional change that advantages the majority religious community at the expense of minority communities, that concentrates power in the central executive at the expense of state governments and of citizens, that reduces the space for political dissent and civil society activism through the weaponization of criminal law, and that uses the machinery of electoral democracy (parliamentary majorities, constitutional amendment) to achieve outcomes that are in tension with the substantive values of democratic constitutionalism (minority rights, pluralism, rule of law, separation of powers).

Comparative constitutional scholars have described this pattern as democratic backsliding, distinguished from democratic breakdown by the fact that it occurs within formal constitutional processes rather than through their overthrow. Leaders like Viktor Orban in Hungary, Jair Bolsonaro in Brazil, and Recep Tayyip Erdogan in Turkey have used similar methods: winning electoral majorities, using those majorities to change constitutional and legal frameworks in

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ways that entrench their power and marginalize their opponents, while maintaining the formal apparatus of democratic legitimacy including elections, parliaments, and courts.

The Indian case is distinctive in the scale of the country, the depth of its constitutional traditions, the existence of a genuinely independent judiciary that has in some important cases resisted the majoritarian project, and the robustness of civil society despite the pressures it faces. But the pattern is recognizable and its constitutional implications are serious.

The most fundamental constitutional implication is about the relationship between democracy and constitutionalism. Democratic majoritarianism, the doctrine that the will of the majority should prevail on all questions of public policy, is in tension with constitutionalism, the doctrine that there are certain rights and principles that no majority can override. The Indian Constitution was built on the understanding, embodied in its basic structure doctrine and its fundamental rights chapter, that constitutionalism limits democracy rather than being absorbed by it. The challenge of the current period is that the constitutional mechanisms designed to maintain that limit are proving insufficient against a majoritarian political project that commands large electoral majorities and is willing to use those majorities to reshape the constitutional framework in its image.

CHAPTER FOUR: CORRUPTION AS CONSTITUTIONAL SYSTEM - THE INSTITUTIONALIZATION OF GRAFT AND THE FAILURE OF ANTI-CORRUPTION FRAMEWORKS

4.1 The Constitutional Dimensions of Corruption

Corruption in India is not merely a failure of individual ethics. It is a structural phenomenon embedded in the institutional architecture of the Indian state, an architecture that is in turn shaped decisively by the constitutional framework. Understanding corruption as a constitutional problem, rather than as a law enforcement problem or a cultural problem, is essential to understanding why anti-corruption efforts in India have historically been so inadequate and why the structural conditions for corruption persist despite decades of institutional reform.

The constitutional conditions for corruption begin with the concentration of discretionary power in the hands of public officials. Every instance of corruption requires two elements: a public official with the power to confer a benefit or inflict a harm, and a private party willing to pay to obtain the benefit or avoid the harm. The greater the discretionary power of public officials, the greater the value of corrupt access to that power, and therefore the greater the incentive for corruption on both sides of the transaction.

The Indian constitutional framework creates enormous volumes of official discretionary power. The licensing system, the land acquisition powers, the regulatory approval processes, the government procurement processes, the allocation of natural resources, the grant of permissions and licenses for commercial activities, the administration of welfare schemes, the implementation of infrastructure projects, all of these involve the exercise of discretionary power

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by officials who have both the opportunity and, given the inadequacy of official salaries and the absence of effective monitoring, sometimes the incentive to demand illegal payments.

The problem is compounded by the constitutional structure of the bureaucracy. The Indian Administrative Service, the Indian Police Service, and the other All India Services are constitutional services, established under Articles 308 to 323 of the Constitution. Their members have constitutional security of tenure that makes them effectively impossible to dismiss for poor performance, as opposed to provable misconduct. This constitutional protection, which was designed to insulate the civil service from political pressure, also insulates it from accountability for the routine exercise of official power in ways that are not provably but are substantively corrupt.

The constitutional provisions for the protection of public servants from prosecution are particularly significant. Article 311 provides extensive protections for civil servants against dismissal, removal, or reduction in rank, requiring departmental inquiry before such action and limiting the grounds on which it can be taken. Section 197 of the Code of Criminal Procedure, now continued in the BNSS, requires prior sanction from the relevant government before a public servant can be prosecuted for acts done in the discharge of her or his official duties. This sanction requirement has been extensively misused to shield public servants who commit offenses in the course of their duties from criminal prosecution. The government that would be required to grant sanction is often also the government that appointed the official or that benefits from the official's actions, creating a structural conflict of interest that makes sanction systematically difficult to obtain.

4.2 The Prevention of Corruption Act and the Constitutional Architecture of Impunity

The Prevention of Corruption Act of 1988, and its subsequent amendment in 2018, is the primary legislative instrument for addressing corruption by public servants. The Act criminalizes bribery, misuse of official position for pecuniary advantage, obtaining valuable things from persons with whom the official has official dealings, and various other forms of corruption.

But the enforcement record of the PCA reveals the structural constraints on its effective application. Conviction rates in PCA cases are very low. Cases take years or decades to reach trial. The evidentiary requirements, particularly the requirements relating to proof of corrupt intent and of a corrupt agreement, are difficult to satisfy in cases where corruption is systemic and informal rather than embodied in documented transactions.

The 2018 amendment to the PCA made significant changes to the law, some of which have been criticized as weakening rather than strengthening anti-corruption enforcement. The amendment introduced a requirement that prior sanction be obtained before arresting public servants for offenses under the Act, not merely before prosecuting them. This change, combined with the existing sanction requirement for prosecution, means that investigating agencies must obtain executive permission at two stages before they can effectively pursue corruption cases against public servants. Since the executive that grants permission is often the same executive that appoints and oversees the public servants being investigated, the structural barriers to corruption

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prosecution have been increased by an amendment that was nominally intended to strengthen anti-corruption law.

The constitutional structure of the Central Bureau of Investigation, the primary agency for investigating corruption cases against senior officials, is a microcosm of the broader constitutional problem of accountability. The CBI is established under the Delhi Special Police Establishment Act of 1946, a colonial-era statute. Its director is appointed by a statutory committee that includes the Prime Minister, the Leader of the Opposition, and the Chief Justice of India, a structure introduced after the Supreme Court's intervention in Vineet Narain v. Union of India in 1997 to insulate the appointment from purely executive control.

But the CBI's functioning remains deeply subject to executive influence. Its operational budget is provided by the central government. Its staff comes from the IPS and other services controlled by the central government. Its cases are prosecuted by prosecutors who are central government appointees. The cases it chooses to investigate, the vigor with which it investigates them, and the decisions to prosecute or not prosecute are all potentially subject to political direction in ways that are structural rather than merely incidental.

The Supreme Court itself has described the CBI as a "caged parrot," echoing the views of its master. This description, by the Court rather than merely by commentators, is a devastating assessment of the constitutional failure to create an independent anti-corruption machinery. The structural conditions for a genuinely independent anti-corruption agency include financial independence from the executive, operational independence in the selection and conduct of investigations, prosecutorial independence, secure tenure for leadership, and a transparent and independent appointment process. None of these conditions is fully satisfied by the current constitutional and legal framework for the CBI.

4.3 Electoral Finance, Political Parties, and the Constitutional Corruption of Democratic Politics

The intersection of money and political power in India has created what critics describe as a constitutional corruption of democracy: a system in which the formal apparatus of democratic choice coexists with a structural reality in which political outcomes are deeply shaped by the financial resources of competing interests.

The striking down of the electoral bond scheme by the Supreme Court in February 2024 exposed the dimensions of this structural corruption. The data that emerged after the Court's order showed that political parties, particularly the ruling Bharatiya Janata Party, had received enormous donations from corporate entities that were simultaneously under investigation or regulatory scrutiny by central government agencies. The correlation between being under investigation and making large political donations, analyzed by multiple investigative journalists and civil society organizations, suggested a systemic relationship between regulatory power and political fundraising.

The constitutional framework that allowed this situation to develop is one that failed to require transparency in political finance, failed to cap political donations in ways that prevented the

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domination of political funding by large corporate interests, failed to provide adequate public financing for political parties that would reduce their dependence on private money, and failed to establish independent and effective oversight of political finance that was genuinely insulated from the influence of the parties whose finance it was supposed to oversee.

The reform of political finance is a constitutional matter because free and fair elections, which the Supreme Court has held to be a basic structure of the Constitution, require that elections be reasonably free from the distorting influence of money on political competition. A system in which parties with access to enormous corporate funding have structural advantages in electoral competition that small parties or those relying on small donations cannot overcome is not a system of free and fair elections in any substantive sense, even if it is technically procedurally fair.

The theoretical framework for understanding this relationship between money and constitutional democracy draws on the work of scholars including Jedediah Purdy, who has written extensively on the relationship between capitalism and constitutional democracy in the American context and whose analysis has direct relevance to India, and Lawrence Lessig, whose theory of institutional corruption describes a form of corruption that does not involve individual dishonesty but involves the systematic dependence of institutions on those whose interests they are supposed to oversee. The Indian political finance system exhibits exactly this form of institutional corruption: political parties dependent on the funding of regulated industries cannot effectively regulate those industries regardless of the personal integrity of individual politicians.

4.4 Corruption in the Judiciary and the Constitutional Crisis of Justice

The corruption of the judicial system is perhaps the most constitutionally catastrophic form of institutional corruption in India, because the judiciary is the constitutional mechanism for the enforcement of all other constitutional guarantees. When the judiciary is itself corrupt or compromised, there is no institutional backstop of last resort.

The evidence of corruption in the lower courts of India is extensive, systematic, and well-documented. Surveys of citizens' experience of the courts, including the India Justice Report published by the Tata Trusts and partner organizations, the experience documented by organizations working with poor litigants, and numerous judicial inquiries and commissions, consistently report that informal payments to court staff, lawyers, and sometimes judges are a routine expectation in the lower courts of many states. For the poor citizen who cannot afford the formal costs of litigation, let alone informal payments, the judicial system is functionally inaccessible not merely because of cost but because of the informal economy of access that pervades it.

Corruption at the higher court level is less visible and more contested, but the collegium system of judicial appointments, under which senior Supreme Court judges appoint their own successors and the successors to High Court positions, has been extensively criticized for creating conditions that are structurally hospitable to nepotism, informal relationship-based appointments, and the exclusion of candidates who do not have the right social connections regardless of their merit. The collegium system's defenders argue that it protects judicial independence from

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political interference. Its critics argue that it has replaced political interference with judicial oligarchy, an equally problematic form of capture of a public institution by private interests.

The constitutional reform of the judiciary requires attention to both appointment and accountability. The National Judicial Appointments Commission, struck down in 2015, was an attempt at the former that raised genuine questions about the balance between judicial independence and democratic accountability. A better approach would be a genuinely independent appointments commission including judicial members, parliamentary representatives, eminent persons from civil society, and academics, with transparent selection criteria and a public confirmation process. The accountability side requires independent judicial conduct investigation mechanisms, financial disclosure requirements for judges, and reform of the contempt of court power that judges can currently use to suppress criticism of themselves.

CHAPTER FIVE: SOCIETY UNDER THE CONSTITUTION - WHO BENEFITS, WHO SUFFERS, WHO IS VICTIMIZED

5.1 The Constitutional Promise of Social Equality and the Reality of Caste

The Constitution of India contains some of the most explicitly anti-discrimination provisions of any constitution in the world. Article 17 abolishes untouchability and makes its practice an offense punishable by law. Article 15 prohibits discrimination by the state on grounds of religion, race, caste, sex, or place of birth. Article 16 guarantees equal opportunity in matters of public employment. Articles 15(4) and 16(4) permit the state to make special provisions for the advancement of socially and educationally backward classes and for the reservation of appointments for scheduled castes and scheduled tribes.

These provisions represent the constitutionalization of the Ambedkarite program of legal equality for those oppressed by the caste system. Ambedkar, who had experienced caste discrimination personally and had made the eradication of caste the central project of his intellectual and political life, fought within the Constituent Assembly for constitutional provisions that would give legal protection to the victims of caste oppression and create affirmative action frameworks to address the accumulated disadvantages of centuries of systematic exclusion.

But the constitutional commitment to equality has coexisted, for seven decades, with the continuation of caste as the fundamental organizing principle of Indian social, economic, and political life. This coexistence is not accidental. It is structural. The Constitution abolished untouchability in Article 17 but did not and could not abolish the social and economic infrastructure that made untouchability a reality, the village economy that segregated labor by caste, the marriage market that was organized entirely around caste endogamy, the educational system that had historically excluded lower castes, the religious institutions that authorized and reproduced caste hierarchy, the cultural norms that attached honor and shame to caste identities.

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The post-constitutional history of caste discrimination in India demonstrates that legal prohibition without structural economic and social transformation produces neither equality nor genuine dignity for those who were at the bottom of the caste hierarchy. Dalit atrocities (crimes against scheduled caste members) remain endemic in rural India decades after the Protection of Civil Rights Act, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, and numerous other legislative interventions. The NCRB data on atrocities against scheduled castes and scheduled tribes shows not a decline but an increase in reported cases in recent years, a trend that may reflect both an actual increase in violence and an increase in the willingness of victims to report, but that in either case indicates that the constitutional commitment to equality has not been translated into social reality.

The reservation framework, which was originally intended as a temporary measure for ten years but has been extended repeatedly and expanded in scope, has delivered significant benefits to a section of the scheduled caste and scheduled tribe populations, particularly in government employment and education. But the benefits of reservation have been distributed unevenly, with the relatively more advantaged sub-communities within scheduled caste and scheduled tribe categories benefiting disproportionately. The question of sub-categorization within the scheduled caste list, recently addressed by the Supreme Court in a significant judgment authorizing states to sub-categorize within the SC list for purposes of reservation, reflects the fact that the original constitutional framework was too blunt an instrument to address the internal differentiation of caste disadvantage.

The Other Backward Class reservation framework, added to the Constitution through the Seventy-Seventh Amendment following the implementation of the Mandal Commission report, has created a political dynamics around caste identity that is complex and sometimes contradictory. Caste-based reservations have provided economic and social mobility to some among the backward classes while simultaneously reinforcing the salience of caste identity in political life, creating incentives for groups to seek or maintain backward class status rather than pursuing policies that would eliminate the basis for that status by addressing the actual conditions of backwardness.

5.2 Gender, the Constitution, and the Structural Failure of Women's Equality

The Constitution of India guarantees equality of the sexes. Article 15(1) prohibits discrimination on grounds of sex. Article 16 guarantees equal opportunity in public employment. Article 14 guarantees equality before the law. Article 21 guarantees the right to life and personal liberty. The 73rd and 74th Amendments reserved one-third of seats in local self-government bodies for women. The 106th Amendment, enacted in 2023, reserved one-third of seats in Parliament and state assemblies for women.

This formal constitutional commitment to gender equality coexists with one of the most gender-unequal societies in the world. India ranks very poorly on global gender inequality indices. The labor force participation rate of Indian women is among the lowest in the world. The gender wage gap is substantial. Domestic violence is endemic and systematically underreported and underprosecuted. Child marriage, despite its prohibition, continues to occur in significant numbers. The sex ratio at birth and in early childhood reflects sex-selective practices that amount

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to systematic discrimination against female children. Sexual violence, including marital rape which the Supreme Court refused to criminalize in a decision that drew wide criticism, is widespread and insufficiently addressed by the legal system.

The gap between constitutional promise and social reality in the gender domain reflects a constitutional framework that addressed formal legal discrimination without creating the institutional, economic, and social conditions necessary for substantive gender equality. The Directive Principles that required equal pay for equal work were non-justiciable. The constitutional provisions on marriage and family were left to be governed by a multiplicity of personal laws, organized by religious community, which systematically disadvantaged women in marriage, divorce, maintenance, and inheritance. The Uniform Civil Code mandated by Article 44 of the Directive Principles has not been enacted despite seven decades of constitutional obligation. The persistence of personal law systems that codify religious-community approaches to family relations, most of which were patriarchal in their design and in their contemporary operation, means that the constitutional guarantee of gender equality is not applied to the sphere of family life in which gender inequality most profoundly shapes women's lives.

The recent criminalization of triple talaq by the Muslim Women (Protection of Rights on Marriage) Act of 2019, which makes instantaneous triple divorce a criminal offense, has been presented by the government as a measure protecting Muslim women. Critics have noted the political context of the measure, its selective application to Muslim family practices at a time when the BJP government was engaged in a broader political project directed at Muslim communities, and the fact that the criminalization of a civil law matter (divorce) with imprisonment rather than civil remedies is a crude and arguably counterproductive response to the genuine problem of arbitrary divorce. But the deeper constitutional point is that the framework of religious personal laws creates a structural obstacle to gender equality that cannot be addressed through selective intervention in one community's practices without a comprehensive approach to gender equality in family law for all communities.

5.3 Adivasi Communities, Forest Rights, and the Constitutional Encounter Between Indigenous Rights and the Developmental State

The scheduled tribes, constituting approximately eight percent of India's population and living predominantly in forest areas, hills, and tribal belts, represent the community that has been most catastrophically victimized by the operation of the post-colonial Indian state. Their victimization has been systematic, structural, and constitutionally authorized.

The constitutional provisions relating to scheduled tribes are extensive. The Fifth Schedule provides for the administration of scheduled areas in nine states, with tribal advisory councils and a requirement that the President's assent be obtained for the extension of existing laws to scheduled areas. The Sixth Schedule provides for autonomous district and regional councils in certain tribal areas of the northeastern states. The Panchayats (Extension to Scheduled Areas) Act of 1996, known as PESA, extended the panchayati raj system to scheduled areas with specific provisions for tribal self-governance. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act of 2006, known as the Forest Rights Act,

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recognized the historic forest rights of tribal communities and provided for the granting of individual and community forest rights titles.

These provisions represent, at least formally, a constitutional and legislative framework for the protection of tribal rights and interests. But the actual experience of tribal communities in their encounter with the Indian state has been one of systematic dispossession, displacement, and criminalization.

The forest laws of India, including the Indian Forest Act of 1927 and its successors, created a framework that converted tribal communities' customary rights to forest land into trespassing. By declaring large areas of forest as reserved or protected, the colonial and post-colonial state eliminated the legal basis for tribal habitation and cultivation of the forests that the tribal communities had inhabited and cultivated for generations. The communities that had managed these forests sustainably for centuries found themselves reclassified as encroachers on government property.

The displacement of tribal communities for development projects, including dams, mines, industrial plants, wildlife sanctuaries, and national parks, has been documented extensively by scholars and human rights organizations. Estimates of the total displacement caused by development projects in India since independence range from twenty-five million to sixty million persons, with tribal communities making up a disproportionate share of the displaced. The constitutional provision for rehabilitation and resettlement of displaced persons, contained in the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act of 2013, has been significantly weakened by amendments and exemptions and by the practical difficulty of enforcing resettlement obligations against the state.

The Forest Rights Act of 2006 was intended to address the historical injustice of the criminalization of tribal forest rights, but its implementation has been deeply inadequate. Millions of claims for forest rights titles have been rejected, often on procedural or evidentiary grounds that reflect the difficulty that tribal communities face in producing documentary evidence of rights that were never formally recorded. The Supreme Court's 2019 order in Wildlife First v. Ministry of Forest and Environment, which initially directed the eviction of millions of persons whose forest rights claims had been rejected, before being modified after massive protests, illustrated the vulnerability of tribal communities to displacement through the judicial and administrative process even under a constitutional and legislative framework that was formally designed to protect them.

5.4 The Urban Poor and the Constitutional Failure of the Right to the City

The Constitution does not mention cities. It mentions municipalities in the context of the 74th Amendment, which establishes a constitutional framework for urban local self-government. But the actual constitutional framework for addressing the lives of the rapidly growing urban poor, who constitute hundreds of millions of persons living in unauthorized colonies, slums, and informal settlements in India's cities, is deeply inadequate.

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The right to housing, derived by the Supreme Court from Article 21's right to life and dignity, has been affirmed in numerous judgments. But the enforcement of this right has been deeply inconsistent, with the Court simultaneously affirming the right to housing in principle and, in numerous specific cases, authorizing the demolition of slum settlements on the ground that the land was government property or that the settlements constituted encroachments.

The judicial approach to urban informal settlements reflects a broader constitutional contradiction. The constitutional right to life requires access to shelter. The constitutional framework for property (Article 300A) protects the state's right to acquire property by authority of law without judicial review of the adequacy of compensation. The constitutional framework for local governance (Articles 243P to 243ZG) gives municipalities authority over urban planning and development. These provisions, in combination, create a framework in which municipal authorities can demolish informal settlements by classifying them as unauthorized structures on government land, without providing adequate alternative housing, and this process is constitutionally defensible even though it destroys the shelter of millions of people.

The Supreme Court's judgment in Olga Tellis v. Bombay Municipal Corporation in 1985 is the foundational case on the right to housing of pavement dwellers. The Court held that the right to livelihood was part of the right to life under Article 21, that the forced eviction of pavement dwellers destroyed their livelihood, and that the state must provide reasonable notice and the opportunity of hearing before evicting slum or pavement dwellers. This was an important step forward in constitutional protection for the urban poor. But subsequent judicial practice has been less protective: courts have authorized large-scale demolitions with inadequate procedural compliance and have treated the constitutional right to housing as a qualified right that must yield to urban planning and development objectives.

The constitutional inadequacy is at the level of substantive rights protection. A constitution genuinely committed to the right to life and dignity would not merely guarantee procedural rights before eviction but would guarantee the substantive right to adequate housing, would require the state to ensure that its development and urban planning activities did not destroy the homes of those who lacked the resources to access formal housing, and would establish enforcement mechanisms that gave substance to this guarantee rather than leaving it to the discretionary grace of executive authorities or the uncertain intervention of courts.

5.5 The Health System, the Constitutional Right to Life, and the Catastrophe of Pandemic Response

The right to health has been held by the Supreme Court to be an element of the right to life under Article 21. The state's constitutional obligation to protect the right to health includes the obligation to provide emergency medical treatment, to maintain public health infrastructure, and to ensure that the population is not denied access to health care through the state's own actions.

The COVID-19 pandemic of 2020 and 2021 exposed the catastrophic inadequacy of India's public health infrastructure in ways that have deep constitutional significance. The sudden and inadequately planned lockdown announced in March 2020, which left millions of migrant workers stranded without income, food, or transport in cities far from their home states, was a

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constitutional failure of the most immediate and devastating kind. Workers who had no ability to access the government's relief schemes, who could not afford the quarantine periods required, who were dependent on daily wages that the lockdown eliminated, and who faced hundreds of kilometers of travel on foot to reach their homes, were victimized by the constitutional order's failure to provide a legal framework for the protection of their most basic interests in a crisis.

The oxygen crisis of April and May 2021, in which thousands of COVID-19 patients died because hospitals could not access adequate oxygen supplies, was a constitutional failure of the state's obligation to protect the right to life. The High Courts of Delhi, Bombay, Allahabad, and others intervened forcefully during the second wave, issuing orders to the central and state governments about oxygen supply, hospital capacity, and vaccine procurement. The Supreme Court initially adopted a deferential stance, expressing concern but declining to issue the kind of coercive orders against the executive that the crisis demanded. The contrast between the vigorous judicial intervention to protect property rights and business interests in numerous cases and the relative judicial deference to the executive in the face of a public health crisis that was killing tens of thousands was noted by constitutional scholars as evidence of the class character of judicial constitutional enforcement.

CHAPTER SIX: THE FOREIGN POLICY DEFICIT - HOW THE CONSTITUTIONAL ARCHITECTURE SHAPES INDIA'S RECKLESS NEIGHBORHOOD RELATIONS

6.1 The Constitutional Framework of Foreign Policy and Its Democratic Deficit

Foreign policy in India is constitutionally a subject of the Union List (Entry 10 of the Union List covers foreign affairs). The conduct of foreign policy is an executive function exercised by the Union Council of Ministers, which in practice means by the Prime Minister and the Ministry of External Affairs under her or his direction. Parliament has no formal constitutional role in the making or ratification of treaties: India does not have a treaty ratification requirement equivalent to the US Senate's role in treaty ratification, and the executive can commit India to binding international obligations without parliamentary approval.

This constitutional concentration of foreign policy authority in the executive, without meaningful parliamentary oversight or ratification requirements, means that India's foreign policy is shaped by the political priorities of the governing party rather than by a deliberative democratic process. It means that foreign policy decisions with significant long-term consequences for India's strategic position, its relationships with neighbors, and its international obligations can be made by the executive alone.

The consequences of this constitutional arrangement for India's neighborhood relations have been significant and in important respects negative. India's relationship with each of its immediate neighbors, Pakistan, China, Bangladesh, Nepal, Sri Lanka, Bhutan, and Myanmar, has been at various times deeply troubled, and many of these troubles have been exacerbated by the exercise of a domineering, paternalistic, or interventionist Indian foreign policy that reflects the same centralizing, hierarchical impulses that characterize the domestic constitutional framework.

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The theoretical framework for understanding this connection draws on the democratic peace theory and its extensions in the international relations literature. Democracies that are genuinely accountable to their citizens, that have vibrant civil societies and free media, and that must secure democratic consent for major foreign policy commitments tend to pursue foreign policies that are less aggressive, more consistent, and more sensitive to the interests of weaker neighbors than do states whose foreign policy is effectively the personal prerogative of a dominant executive.

When foreign policy is made by a small elite around the Prime Minister, without meaningful parliamentary accountability, without a transparent process for incorporating diverse perspectives, and without the constraint of civil society criticism that a free press would facilitate, it tends to reflect the elite's understanding of national interest rather than a genuinely popular understanding. In India, this has historically meant a foreign policy that is simultaneously ambitious in its claim to regional primacy and inadequate in its understanding of the legitimate interests and concerns of neighbors.

6.2 Pakistan: The Constitutional Origins of an Unresolvable Conflict

The India-Pakistan relationship is the defining geopolitical reality of South Asia and has been shaped since 1947 by constitutional, political, and historical factors that are deeply intertwined. The constitutional dimension of this relationship begins with the manner in which the Indian Constitution approached the partition of British India.

The Constitution of India, in its territorial provisions, treats the territory of India as defined by the borders inherited from British India at partition, modified by the integration of the princely states. This territorial definition created, from the outset, an irreducibly contested relationship with Pakistan, because the borders between India and Pakistan were drawn in the chaos of partition, creating territorial claims and counter-claims that have never been authoritatively resolved.

The most consequential of these unresolved territorial disputes is Kashmir. The constitutional status of Jammu and Kashmir under the Indian Constitution is one of the most complex and contested questions in Indian constitutional history. The original Article 370, which gave Jammu and Kashmir a special constitutional status with a separate Constituent Assembly, constitution, and flag, represented a constitutional recognition that the accession of Jammu and Kashmir to India was constitutionally different from the accession of other princely states and that the final determination of the state's political future remained to be settled.

The abrogation of Article 370 by the Modi government in August 2019, through a constitutional sleight of hand that used the President's power to apply the provisions of the Constitution to Jammu and Kashmir to effectively nullify the provisions that gave the state its special status, without the consent of the state's legislature and at a time when the state was under President's Rule, was a constitutional act of significant consequence for India's relationship with Pakistan. The action was challenged in the Supreme Court, which upheld it in a judgment that was widely criticized by constitutional scholars for accepting a constitutional interpretation that allowed the

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executive to fundamentally alter a state's constitutional status through a mechanism that circumvented the requirement of state legislative consent.

The international consequences of the abrogation of Article 370 for India's neighborhood relations are significant. Pakistan, which had always claimed Jammu and Kashmir as its own on the basis of its Muslim majority, used the abrogation as a rallying point for intensified international advocacy on the Kashmir issue, including at the United Nations. China, which claims Aksai Chin as part of its territory, used the reorganization of Ladakh as a Union Territory as a justification for heightened diplomatic pressure on the territorial dispute. The relationship with both neighbors deteriorated significantly in the period following August 2019.

The constitutional point here is not whether the abrogation of Article 370 was right or wrong as a matter of policy. Reasonable people can and do disagree about this. The constitutional point is that a foreign policy act of this magnitude, with such significant implications for India's relations with its neighbors and for the international legal dimension of the Kashmir dispute, was taken by the executive alone, without parliamentary deliberation of the depth that such a decision required, without any consultative process with the affected population of Jammu and Kashmir, and through a constitutional mechanism whose legitimacy was genuinely contested.

This is the constitutional foreign policy deficit in its most acute form: consequential decisions that will shape India's international relations for decades are made by an executive that is constitutionally unaccountable for foreign policy decisions in a meaningful sense and that exercises this power in ways that reflect the political priorities of the governing party rather than a carefully deliberated national interest.

6.3 China and the Constitutional Failure of Strategic Accountability

India's relationship with China is the other defining strategic relationship of its neighborhood, and the constitutional framework for foreign policy has shaped this relationship in ways that have at times been deeply damaging to India's strategic interests.

The Doklam standoff of 2017 and the Galwan Valley clash of June 2020, in which Indian and Chinese soldiers engaged in hand-to-hand combat resulting in casualties on both sides, were among the most significant security incidents in the India-China relationship since the 1962 war. The government's handling of both incidents, and particularly its communication to the public about what happened and about the territorial implications, was characterized by critics as opaque, misleading, and insufficient.

The constitutional dimension of this opacity is important. In a constitutional democracy, the government's management of a significant border conflict and its territorial implications ought to be subject to parliamentary scrutiny and accountability. Parliament should be informed, should debate the implications, and should provide a democratic check on executive decisions about how to respond. In the Indian constitutional framework, the executive's discretion over foreign affairs and security matters is so broad that parliamentary accountability is largely formal rather than substantive. The government provides briefings to parliamentary committees, but the effective disclosure and accountability on sensitive security matters is limited.

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The opposition parties raised serious questions about the government's handling of the Galwan incident, including whether the government had been fully transparent about the extent of Chinese ingress into territories that India had previously patrolled, and whether the subsequent diplomatic understandings that led to disengagement reflected territorial concessions. The government denied concessions. But the constitutional framework provides no effective mechanism to verify executive claims about territorial matters and to hold the executive accountable if those claims are inaccurate.

6.4 The South Asian Neighborhood and the Doctrine of Regional Primacy

India's relationships with its smaller South Asian neighbors, Bangladesh, Nepal, Sri Lanka, Bhutan, and the Maldives, have been marked by a recurring tension between India's self-perception as the dominant regional power and its neighbors' insistence on their sovereign right to conduct their own foreign policies without Indian interference or conditionality.

The Indian doctrine of regional primacy, sometimes called the India Doctrine in South Asian strategic discourse, reflects the same centralizing, hierarchical impulses that characterize the domestic constitutional framework. Just as the domestic constitutional framework concentrates power in the Centre at the expense of the states, the Indian approach to the South Asian neighborhood has tended to treat smaller neighbors as subordinate entities whose policy choices must be acceptable to New Delhi rather than as sovereign equals making independent choices about their international relationships.

This approach has produced recurring crises in India's neighborhood relations. The economic blockade of Nepal in 2015 and 2016, following Nepal's adoption of a new constitution that India viewed as insufficiently protective of the Madhesi community in the Terai region, was widely perceived in Nepal as Indian coercion and significantly damaged India-Nepal relations, driving Nepal closer to China precisely by demonstrating the costs of exclusive dependence on India. The perception of Indian interference in Sri Lankan internal affairs during the civil war period, including the period of the Indo-Sri Lanka Accord of 1987 and the Indian Peace Keeping Force deployment, left a lasting legacy of ambivalence in Sri Lanka about the relationship with India that influences Sri Lankan strategic calculations to this day.

The Maldives crisis of 2023 to 2024, in which the newly elected government of Mohamed Muizzu demanded the withdrawal of Indian military personnel from the Maldives and sought to rebalance the country's relationships away from India and toward China, was a symptom of this broader pattern: a smaller neighbor chafing against perceived Indian dominance and using the China relationship as a counterweight. The Indian government's response, which included a tourism boycott campaign on social media, was widely criticized as counterproductive and as reflecting a political management approach to foreign policy rather than a strategic approach.

The constitutional dimension of this pattern is the absence of a constitutional framework for the democratic accountability of foreign policy that would create incentives for a more consultative, careful, and strategically coherent approach to neighborhood relations. When foreign policy is the personal prerogative of the Prime Minister, exercised without meaningful parliamentary oversight and with the media either captured or too competitive for nuance, the incentives are

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toward dramatic gestures and nationalist signaling rather than patient, carefully calibrated diplomacy. The Maldives response, with its social media-driven boycott campaigns, is a perfect example of a foreign policy response shaped by domestic political incentives rather than by a careful assessment of India's long-term strategic interests.

6.5 The Constitutional Basis for a Better Foreign Policy

The reform of India's approach to neighborhood relations requires both a constitutional reform and a cultural shift in how foreign policy is conceived and practiced. The constitutional reform should include a treaty ratification requirement that subjects significant international agreements to parliamentary approval, a formal parliamentary committee on foreign affairs with genuine access to classified information and with the ability to hold the executive accountable for foreign policy conduct, and a foreign policy review process that requires the executive to consult with state governments on matters of foreign policy that directly affect their territories and populations.

The cultural shift requires a reorientation of Indian foreign policy away from the assumptions of regional primacy and toward a conception of India as a responsible regional power that leads through example, through economic partnership, and through the genuine promotion of regional integration and mutual benefit, rather than through the exercise of coercive leverage.

These two requirements are deeply connected. The constitutional reform that creates genuine democratic accountability for foreign policy will, over time, create the incentives for a more responsible, more consistent, and more strategically coherent foreign policy approach to the neighborhood. When the Prime Minister must defend foreign policy decisions before a parliamentary committee with genuine oversight powers, when foreign policy decisions can become electoral liabilities rather than merely nationalist rallying points, when state governments and civil society have constitutional mechanisms through which to influence foreign policy on matters that affect them directly, the incentives for responsible foreign policy are stronger.

CHAPTER SEVEN: THE BRITISH CONSTITUTIONAL LEGACY AND THE ARGUMENT FOR LIBERATION

7.1 What the British Left Behind: A Systematic Accounting

The term "British Constitution" in the Indian context does not refer to a single document, because Britain does not have one, but to the accumulated constitutional legacy of British rule in India: the administrative structures, the legal institutions, the procedural frameworks, the conceptual vocabulary, and the political habits that the departing British power left as the operating system of the Indian state. This legacy is complex, multidimensional, and deeply contested. Acknowledging it honestly requires neither simple denunciation nor simple celebration but careful analysis.

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The British left India a relatively unified administrative apparatus, the Indian Administrative Service, built on the foundations of the Indian Civil Service. This apparatus had significant strengths: it was technically competent in certain domains, it provided a degree of administrative continuity across changes of government, and it had established procedures for record-keeping, correspondence, and policy implementation. But it was also hierarchical in its conception of authority, paternalistic in its relationship to citizens, and deeply unrepresentative in its social composition, drawing predominantly from the urban educated upper-caste elite that had been favored by colonial educational policy. These institutional characteristics did not change with independence. They were inherited along with the administrative structure itself.

The British left India a legal system built on English common law, English equity, English statutory interpretation, and English procedural norms. This legal system had the advantage of relative sophistication and of connection to a body of jurisprudence accumulated over centuries. But it was a system designed for the management of a colonial population rather than the protection of the rights of a sovereign people, and it operated in a language (English) that was inaccessible to the vast majority of the population it governed.

The British left India a parliamentary system of government modeled on Westminster, with the cabinet system, collective responsibility, the whip system, parliamentary questions, the adversarial committee system, and the procedural framework of debate and legislation. This system functioned reasonably well in the specific social, political, and institutional context of twentieth-century Britain. Whether it was the appropriate system for a country of India's size, diversity, and developmental challenges is a question that the Constituent Assembly debated and largely left unexamined, so deeply ingrained was the institutional preference for the Westminster model among those who had been educated in it.

The British left India a conception of federalism that was, as the Government of India Act's architects explicitly intended, not genuine federalism but disguised unitarism: a federal structure with a powerful center and provinces that were, in the last analysis, subordinate administrative units of the central government. This conception, inherited into the Constitution, has shaped the entire subsequent history of centre-state relations in India in ways that have consistently disadvantaged the states and prevented the genuine devolution of power to the level of government closest to the citizens.

7.2 Colonial-Era Laws That Continue to Operate: A Legislative Archaeology of Oppression

One of the most under-appreciated dimensions of the constitutional legacy of colonialism in India is the enormous number of colonial-era statutes that remain on the statute books of India and of the states, some in substantially unchanged form and some with only superficial modifications. These statutes represent a living archive of colonial administrative priorities and colonial conceptions of the relationship between the state and the subject, and their continued operation in a constitutional democracy that formally guarantees the rights they implicitly deny is a constitutional paradox of enormous practical consequence.

The Indian Forest Act of 1927, already discussed in the context of tribal rights, is one of the most consequential of these colonial inheritances. It establishes a framework for the management of

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forests that privileges state ownership and control over community rights, that treats tribal communities' customary relationships to the forest as legally irrelevant or inferior to state forest rights, and that has been used for decades to dispossess tribal communities from their traditional lands.

The Mines and Minerals (Development and Regulation) Act, though amended multiple times, reflects a colonial-era framework in which all mineral wealth below the ground belongs to the state, not to the communities that live above it. This framework, whatever its original rationale, has in practice meant that tribal communities living in mineral-rich areas receive minimal benefit from the extraction of resources from their territories while bearing the full burden of environmental degradation, displacement, and health impacts. The constitutional provision for district mineral foundations, introduced by the 2015 amendment, is a partial corrective but has been inconsistently implemented.

The Indian Telegraph Act of 1885, under which the telecommunications interception regime operates, is a colonial statute that was enacted to give the colonial government control over communications technology. Its continued operation as the legal basis for state surveillance in an era of digital communications is a constitutional anachronism that creates a structural surveillance capacity far beyond what the colonial drafters envisioned and far beyond what any constitution that takes privacy seriously can justify without a complete legislative overhaul.

The Epidemic Diseases Act of 1897, enacted to manage the bubonic plague epidemic in Bombay, was used during the COVID-19 pandemic as the primary legislative authority for imposing restrictions on movement and assembly. The Act gives the colonial-era authority to impose restrictions without the procedural safeguards, parliamentary oversight, and judicial review mechanisms that a twenty-first century public health emergency law should provide. The Supreme Court's deference to executive authority during the pandemic, even where the restrictions imposed appeared to lack adequate statutory authority, reflected the Court's reluctance to challenge emergency executive action rather than a confident constitutional analysis that the existing legal framework was adequate.

7.3 The Macaulay Criminal Codes and the Perpetuation of Colonial Justice

Thomas Babington Macaulay, the author of the Indian Penal Code of 1860, was one of the most influential figures in the constitutional history of India, even though he never drafted a constitution. His penal code, drafted for a colonial administration with no democratic accountability to those it governed, established the foundational architecture of India's criminal law, an architecture that, despite the replacement of the IPC with the Bharatiya Nyaya Sanhita in 2024, has been substantially preserved.

Macaulay's criminal law framework reflects a number of assumptions that are inconsistent with genuine constitutional democracy. It assumes that the state is the primary victim of crime and that the purpose of criminal law is to maintain order rather than to protect individuals. It reflects an understanding of criminal justice in which the investigative phase is dominated by the executive police without meaningful independent oversight. It assumes that the accused is a problem to be managed rather than a person with constitutional rights that must be respected. It

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reflects the evidentiary framework of a colonial bureaucracy that values documentary and official evidence over the testimony of ordinary people.

The Bharatiya Nyaya Sanhita retains many of these assumptions. The procedural framework remains one in which the police have enormous powers of arrest, search, and detention with limited judicial oversight at the investigative stage. The evidentiary framework continues to value confessions made to police (though the bar for admissibility of police confessions has been raised) and official documents over the accounts of ordinary witnesses. The bail system continues to make pretrial detention the default for many categories of offense, reversing the constitutional presumption of innocence in practice even where the constitutional text endorses it.

The criminal justice system as inherited from colonial administration and as perpetuated by the post-colonial state is not a system designed to deliver justice to victims or to rehabilitate offenders. It is a system designed to maintain order and to manage the populations that the state identifies as threatening to that order. Its operation is characterized by delay (the average criminal case takes years to reach trial), by corruption (informal payments are endemic at every stage of the process), by class and caste bias (the poor, the Dalit, the Adivasi, and the Muslim are disproportionately represented among the accused and disproportionately disadvantaged in the process), and by failure to achieve its own stated objectives of deterrence and rehabilitation.

7.4 Why Incremental Reform Is Insufficient: The Constitutional Bankruptcy Argument

The constitutional reforms discussed throughout this textbook have included the reform of specific provisions, the reform of specific institutions, the reform of specific laws, and the development of new constitutional jurisprudence by the courts. These reforms are not valueless. The right to information, recognized by the Supreme Court as a constitutional right under Article 19 and given statutory form by the Right to Information Act of 2005, has been a genuinely transformative reform that has empowered millions of citizens to access information about the workings of the state. The constitutional amendments establishing panchayati raj and urban local bodies, though imperfectly implemented, have created a constitutional infrastructure for local democracy that has given political voice to women, scheduled castes, and scheduled tribes in ways that would not otherwise have been possible. The Supreme Court's expansion of Article 21 to include the right to privacy, to health, to education, and to dignity has extended constitutional protection to dimensions of human life that the original text left unprotected.

But these reforms, however significant in themselves, have not resolved the fundamental structural problems that Part Three of this textbook has identified. The concentration of executive power has increased, not decreased. The weaponization of criminal law against dissent and against minorities has intensified, not diminished. The corruption of democratic institutions has deepened, not been checked. The inequality between regions, castes, classes, and genders has been moderated at the margins by constitutional reforms but has not been structurally addressed. The foreign policy failures, rooted in the constitutional concentration of foreign policy power in the executive without accountability, have continued.

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The argument for a new constitutional settlement, rather than continued incremental reform of the existing document, rests on several propositions that the preceding chapters have elaborated.

The first proposition is that the foundational structural problem of the Indian Constitution, its colonial inheritance of a centralizing, executive-heavy, rights-undermining framework, is not amenable to piecemeal repair. The colonial DNA of the document pervades not merely its specific provisions but its conceptual architecture, its allocation of powers, its institutional design, its understanding of the relationship between citizen and state. Amending specific provisions without addressing the underlying architecture is like replacing the window frames of a structurally unsound building: it may improve the appearance but it does not address the structural problem.

The second proposition is that the Indian constitutional order has demonstrated, over seven decades, that it generates and perpetuates specific forms of systemic failure that are structural rather than contingent. The failure of genuine federalism, the failure of judicial independence and accountability, the failure of anti-corruption institutions, the failure of minority rights protection, the failure of environmental justice, the failure of gender equality, these are not accidents of political history. They are predictable outcomes of the institutional framework that the Constitution established, operating in the social, economic, and political conditions of Indian society.

The third proposition is that the democratic aspirations of the Indian people in the twenty-first century cannot be adequately served by a constitutional framework that was designed for the India of 1950. The India of 2025 is a country of 1.4 billion people, 943 million of whom are voters, a country with a diverse, urbanized, educated, digitally connected, politically sophisticated population that is demanding not merely procedural democracy but substantive justice, real accountability, and genuine popular sovereignty. The Constitution of 1950, with its concentration of power, its colonial administrative logic, and its non-justiciable social rights, is not adequate to these aspirations.

CHAPTER EIGHT: THEORIES OF CONSTITUTIONAL TRANSFORMATION - FRAMEWORKS FOR A NEW BEGINNING

8.1 The Theory of Constitutional Moments and the Question of Popular Constituent Power

The American constitutional theorist Bruce Ackerman has developed, in his trilogy We the People, a theory of constitutional moments, periods in which the normal processes of representative government are transcended by a higher form of popular political engagement that generates genuine constitutional change. Ackerman argues that the American constitutional order has undergone several such moments, including the founding, the Reconstruction era, and the New Deal, each of which represented a fundamental reorientation of constitutional values and structures through a mobilized popular politics.

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The theory of constitutional moments provides a framework for thinking about the conditions under which a new constitutional settlement in India might become possible. Ackerman's framework suggests that constitutional transformation requires not merely political will at the elite level but a mobilized popular engagement with constitutional questions that creates a form of democratic mandate for change that goes beyond the mandate of ordinary legislative majorities.

India has had several moments in its post-independence history that might, with appropriate institutional design, have become constitutional moments in Ackerman's sense: the independence moment of 1947, the Emergency and its aftermath of 1975 to 1977, and the post-liberalization moment of the 1990s and 2000s. Each of these moments was characterized by significant popular mobilization and by pressure for constitutional change. But none of them resulted in the kind of fundamental constitutional renegotiation that Ackerman's theory would identify as a constitutional moment, because the institutional channels for translating popular mobilization into constitutional change were inadequate.

The current period of Indian politics, characterized by a majoritarian project of constitutional transformation from the Right and by a social movement landscape that includes a women's movement, a dalit movement, a tribal rights movement, an environmental movement, a civil liberties movement, and a regional autonomy movement, contains the elements of potential constitutional mobilization from multiple directions. The question is whether these diverse movements can articulate a coherent constitutional vision that goes beyond resistance to the current government's project and proposes a genuine alternative constitutional settlement.

8.2 Juergen Habermas and the Discourse Theory of Democratic Constitutionalism

The German philosopher Jurgen Habermas has developed, in The Structural Transformation of the Public Sphere and in Between Facts and Norms, a theory of democratic constitutionalism that grounds constitutional legitimacy not in the founding act of a constituent assembly but in the ongoing processes of democratic deliberation through which citizens collectively work out the norms that govern their shared life.

Habermas's discourse theory insists on what he calls the co-originality of rights and democracy: the rights that citizens possess as individuals and the democratic processes through which they collectively govern themselves are equally fundamental and are mutually constitutive rather than standing in tension with each other. Rights are not pre-political constraints on democracy but the legal form of the communicative freedom that democratic self-governance requires. And democratic self-governance is not merely the aggregation of individual preferences through majority voting but the communicative process through which citizens, through rational discourse, reach collectively binding decisions.

This framework has several important implications for the Indian constitutional reform project. First, it implies that constitutional legitimacy depends not merely on the formal democratic credentials of the constituent body but on the quality of the deliberative process through which the constitutional content is developed. A new constitution for India, to be genuinely legitimate in Habermasian terms, would need to be produced through a deliberative process that genuinely

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included the voices of all those who will be bound by it, including those who have historically been excluded from constitutional deliberation: tribal communities, dalits, the urban poor, women from marginalized communities, linguistic minorities, and religious minorities.

Second, the Habermasian framework implies that the legitimacy of constitutional provisions is an ongoing matter rather than a once-and-for-all achievement of the founding moment. Constitutional provisions must be continuously subjected to the test of public reason: can they be justified to all those who are bound by them, including those who are least advantaged by the existing constitutional order? A constitutional order that cannot meet this test, that maintains provisions which cannot be justified to those who bear their costs, lacks democratic legitimacy regardless of its formal constitutional pedigree.

8.3 Rawlsian Justice and the Constitutional Principles of Fairness

John Rawls, in A Theory of Justice and in Political Liberalism, develops a theory of justice as fairness that provides powerful normative criteria for evaluating constitutional orders. Rawls's two principles of justice, the equal liberty principle and the difference principle, together provide a framework for evaluating whether a constitutional order is just in a way that applies directly to the Indian situation.

The equal liberty principle holds that each person should have equal basic liberties compatible with equal liberties for all. Applied to the Indian Constitution, this principle condemns the unequal enforcement of fundamental rights that is a structural feature of the Indian constitutional order: the rich and well-connected can effectively access constitutional protections that the poor and marginalized cannot. A constitution genuinely committed to equal basic liberties must establish enforcement mechanisms that make constitutional rights equally accessible regardless of economic resources.

The difference principle holds that social and economic inequalities are just only to the extent that they benefit the least advantaged members of society. Applied to the Indian constitutional order, this principle provides a powerful critique of the non-justiciable directive principles: a constitutional order that commits to social and economic rights only in the form of non-enforceable aspirations does not seriously engage with the difference principle's requirement that social arrangements be justified to those who are worst off.

Rawls's concept of the original position, in which principles of justice are chosen behind a veil of ignorance where no one knows her or his position in society, is a powerful thought experiment for constitutional design. Behind the veil of ignorance, knowing that one might be a dalit in rural Rajasthan, a tribal woman in Jharkhand, a Muslim in Gujarat, a migrant worker in Delhi, an LGBTQ person in a conservative family, a journalist covering the government, a political activist in Kashmir, what constitutional framework would one choose? The answer to this question, seriously pursued, points toward a constitutional order with justiciable social and economic rights, genuine federalism, strong protections for civil liberties including the right to dissent, effective anti-corruption institutions, and an electoral system that translates popular preferences into governmental representation accurately rather than distortingly.

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8.4 Ambedkarite Constitutional Philosophy and the Unfinished Revolution

Bhimrao Ramji Ambedkar is the most important constitutional thinker India has produced, and his own writings on the Constitution he helped draft contain some of the most penetrating critiques of that document. Ambedkar's constitutional philosophy, which combined a rigorous commitment to individual rights with a recognition of the structured nature of social inequality, a respect for the rule of law with a radical critique of the social structures that law was being asked to transform, and a commitment to democratic constitutionalism with a skepticism about the culture that would determine whether democracy was genuine or merely formal, provides the richest theoretical resource for thinking about constitutional reform in India.

Ambedkar's famous warning in his final speech to the Constituent Assembly, that India was entering political democracy but that social and economic democracy remained to be achieved, and that without social and economic democracy, political democracy would be vulnerable to those who used formal democratic procedures to entrench social and economic privilege, has been vindicated by the subsequent history with uncomfortable accuracy.

Ambedkar's preferred constitutional design, as revealed in his writings and in the Constituent Assembly debates, differed in significant respects from the Constitution that was ultimately adopted. He preferred a stronger central government during the period of social reconstruction, but he also insisted on constitutional guarantees of social and economic rights in a form that would be justiciable. He argued for village panchayats as the basic unit of democracy but recognized the danger that in the absence of social reform, village panchayats would be dominated by the same upper-caste interests that dominated the social hierarchy. He supported reservation as a temporary measure but recognized that it needed to be accompanied by deeper structural reforms in education, land distribution, and economic opportunity.

The unfinished revolution of which Ambedkar spoke is not yet finished. The task of constitutional reform in India must take Ambedkar's framework as its starting point: the recognition that a constitutional order designed for a society structured by caste, class, and patriarchy cannot be constitutionally just without attacking those structures directly, that legal equality without economic and social equality is formal rather than substantive, and that genuine constitutional democracy requires not merely the right to vote but the conditions of equal political agency that make the vote meaningful.

8.5 The Global Experience of Constitutional Replacement: Comparative Cases and Lessons

The argument for a new constitutional settlement in India is not unprecedented in comparative constitutional history. Many countries have adopted new constitutions in response to structural constitutional failure, changed social conditions, the end of authoritarian rule, or a recognition that the existing constitutional framework was inadequate to the demands of a changed society.

South Africa adopted a new constitution in 1996, replacing the interim constitution of 1993 that had been negotiated to manage the transition from apartheid. The South African Constitution is widely regarded as one of the most progressive and thoughtful constitutional documents in the world, with justiciable social and economic rights, a comprehensive bill of rights, a strong

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constitutional court, and an independent chapter on state institutions supporting constitutional democracy. Its drafting process was notably inclusive and deliberative, with extensive public participation.

Bolivia adopted a new constitution in 2009 under the Morales government, which attempted to constitutionalize indigenous rights and plurinational governance in ways that the 1967 constitution had not provided for. The Bolivian experience illustrates both the possibilities and the risks of constitutional replacement in a deeply polarized society: the new constitution represented a genuine expansion of constitutional inclusion but also reflected the political priorities of the governing movement in ways that generated significant opposition.

Colombia adopted its current constitution in 1991, replacing a nineteenth-century constitution that had been extensively amended but could no longer effectively address the country's governance challenges. The 1991 constitution established a Constitutional Court with strong powers of constitutional review, created mechanisms for participatory democracy, and included extensive social rights provisions. The Colombian Constitutional Court has been one of the most activist and creative in the world, using the constitution's social rights provisions to address health care, housing, environmental, and economic rights in ways that have significantly benefited marginalized populations.

These comparative cases suggest several lessons for Indian constitutional reform. First, the process matters as much as the content: a constitutional replacement process that is genuinely inclusive, deliberative, and transparent is more likely to produce a legitimate and durable constitutional settlement than one driven by political elites without broad popular participation. Second, the economic and social context of constitutional replacement matters enormously: a new constitution drafted in a period of political stability and economic growth is more likely to be successful than one drafted in crisis conditions. Third, the institutional design of the replacement process, particularly the composition of the constituent body and the ratification mechanism, will determine whether the resulting constitution genuinely reflects popular sovereignty or merely elite constitutional engineering.

CHAPTER NINE: TOWARD A NEW CONSTITUTIONAL SETTLEMENT - PRINCIPLES, STRUCTURES, AND NECESSARY REFORMS

9.1 First Principles: What a New Indian Constitution Must Establish

A new constitutional settlement for India, whether through comprehensive replacement or fundamental reform of the existing document, must be grounded in a clear articulation of first principles: the foundational values and commitments that the constitutional order is designed to express and protect.

The first principle is genuine popular sovereignty. The new constitutional order must be grounded in a constituent process that is more genuinely representative and participatory than the Constituent Assembly of 1946 to 1950. This means a constituent assembly elected by universal

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adult suffrage, with proportional representation to ensure that the diversity of Indian society is reflected in the body that drafts the constitution, with mechanisms for broad public participation in the deliberative process, and with a ratification process that requires a demonstrated level of popular support rather than merely a parliamentary majority.

The second principle is substantive equality, not merely formal equality. A new constitutional order must recognize that equality before the law is meaningless without equality of condition sufficient to give all citizens the practical ability to exercise their constitutional rights. This means justiciable social and economic rights, including rights to adequate nutrition, housing, health care, education, and social security, with enforcement mechanisms that are accessible to all citizens regardless of economic resources.

The third principle is genuine federalism. A new constitutional order must redistribute power between the Union and the states in ways that give state governments real autonomy in the discharge of their constitutional functions. This means a revision of the fiscal federal framework to ensure that states have adequate financial resources to discharge their functions independently of central transfers. It means constitutional entrenchment of state autonomy from central interference in state subjects. It means a reformed upper house of the Parliament that genuinely represents state interests in the national legislative process. And it means the abolition or fundamental reform of the Governor's office to eliminate its use as a central political instrument.

The fourth principle is democratic accountability of all public power. A new constitutional order must establish effective mechanisms for the accountability of the executive, the legislature, the judiciary, and the bureaucracy to the people they serve. This means transparency requirements, conflict of interest rules, asset disclosure obligations, independent oversight institutions with genuine enforcement powers, and recall mechanisms for elected officials who have systematically betrayed their constituents' trust.

The fifth principle is the protection of political and civil rights against majoritarian erosion. A new constitutional order must establish stronger constitutional protection for freedom of speech, freedom of assembly, freedom of religion, and the rights of minority communities against majoritarian excess. This means substantive rather than formal protection of minority rights, an independent judiciary that is genuinely committed to constitutional morality rather than political convenience, and civil society institutions that can effectively monitor and challenge violations of constitutional rights.

The sixth principle is environmental and intergenerational justice. A new constitutional order must recognize the right to a clean and healthy environment as a fundamental right, must establish constitutional obligations for the sustainable management of natural resources, and must create constitutional accountability mechanisms for environmental protection that go beyond the current framework of executive discretion and delayed judicial review.

9.2 Institutional Architecture: What New Institutions a Reformed Constitution Must Create

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The institutional architecture of a new constitutional settlement must reflect the failures of the existing institutional framework. The following institutional reforms are essential components of any serious new constitutional settlement.

The first is an independent constitutional court. The current system, in which the Supreme Court combines the functions of ordinary appellate court, criminal appellate jurisdiction, and constitutional review court, is inadequate. A separate constitutional court, with jurisdiction over constitutional questions exclusively, would allow for specialized expertise in constitutional adjudication, would permit the development of a more coherent constitutional jurisprudence, and would free the ordinary appellate jurisdiction of a dedicated court of final appeal to address the enormous backlog of ordinary cases that currently consumes much of the Supreme Court's time and attention.

The second is an independent election commission with genuine enforcement powers. The Election Commission of India is a constitutionally established body with a significant track record of defending the integrity of the electoral process. But it lacks the legislative mandate and the institutional resources to effectively address the most serious threats to electoral integrity in the contemporary period: the influence of money on electoral politics, the misuse of social media for the propagation of disinformation, the weaponization of government agencies against opposition candidates, and the structural advantages that incumbent governments enjoy through their control of the announcement of schemes and the timing of policy announcements around elections.

The third is a fully independent and adequately resourced anti-corruption commission. The existing framework of the Central Vigilance Commission, the Lokpal, and the CBI does not provide effective anti-corruption enforcement. A new constitutional anti-corruption commission should have constitutional rather than merely statutory status, secure financial independence from the government's annual budget, leadership appointed through a genuinely independent process, and jurisdiction over all public servants including the highest levels of the executive and the judiciary.

The fourth is a constitutional right to information institution. The Right to Information Act has been a significant achievement, but its constitutional entrenchment is necessary to protect it from legislative weakening, which has occurred through multiple amendments that have reduced its scope and the independence of the Information Commissions that adjudicate complaints under it.

The fifth is a constitutionally entrenched right to legal aid. The right to legal aid must be elevated from its current status as a non-justiciable directive principle, implemented through a statutory scheme of variable quality, to a fundamental constitutional right with effective enforcement mechanisms and adequate public funding.

9.3 The Reform of Criminal Law: Constitutional Principles for a New Criminal Justice Framework

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The reform of the criminal justice system, which has been identified throughout this work as one of the most urgent constitutional priorities, requires a set of constitutional principles that are currently either absent or inadequately implemented.

The first principle is the absolute constitutional prohibition of detention without trial beyond a maximum period determined by a court. The current constitutional framework permits preventive detention for periods that, through successive extensions authorized under different statutes, can effectively become indefinite. A new constitutional framework must establish an absolute maximum period of pretrial detention, after which the state must either charge and try the accused or release them.

The second principle is the constitutional requirement that any arrest must be authorized by an independent judicial authority within twenty-four hours. The current framework allows police to detain persons for periods without producing them before a magistrate, and the UAPA allows even longer periods without judicial authorization. A new framework must require immediate judicial authorization of every arrest as a constitutional condition, with release as the default if this authorization is not obtained.

The third principle is the constitutional prohibition of criminal provisions that are so broadly drafted as to capture constitutionally protected activity. The history of Section 124A (sedition), Section 66A of the Information Technology Act (struck down in 2015), Section 152 of the BNS, and various UAPA provisions demonstrates that broadly drafted criminal law can be used to suppress constitutionally protected speech, assembly, and association. A new framework must establish constitutional standards for the specificity and clarity of criminal law provisions, with judicial review of overly broad provisions.

The fourth principle is the constitutional right to bail as the presumptive default. A new framework must reverse the current presumption, embedded in the UAPA and other statutes, that pretrial detention is the default and bail is the exception. The constitutional presumption of innocence must be translated into a presumption of liberty pending trial, with detention permitted only where specific and judicially reviewed grounds of flight risk, risk of evidence tampering, or risk of serious harm to others are established.

9.4 The Reform of Federal Relations: Constitutional Architecture for a Genuine Union of States

The reform of India's federal structure, which has been shown throughout this textbook to be one of the most critical constitutional imperatives, requires a set of specific constitutional changes that go well beyond the adjustments to the Finance Commission's allocation formula that have been proposed in the existing reform literature.

The first change is the revision of the Seventh Schedule to substantially expand the State List at the expense of the Union List and the Concurrent List, transferring subjects that genuinely require local contextual knowledge and democratic accountability to the state level: education, health, labor regulation, environmental regulation within state territory, and urban development policy.

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The second change is the constitutional entrenchment of fiscal federalism principles that ensure states have adequate revenue-generating capacity independent of central transfers. This requires either the devolution of significant tax-generating capacity to the states or the constitutionalization of a formula for sharing central revenues that is determined by the Finance Commission independently of the central government's annual budget process.

The third change is the abolition of the Governor's office and its replacement by a state head elected by the state legislature for a fixed term that cannot be terminated by the central government, removing the primary instrument through which the Centre has been able to interfere in state democratic processes.

The fourth change is the reform of the Rajya Sabha into a genuine house of states, in which the states are represented as units rather than through the current system of proportional representation based on state population. A reformed Rajya Sabha in which each state has equal representation, regardless of size, and in which state governments (through their nominees) rather than merely state legislatures are represented, would create a constitutional check on central overreach that the current Rajya Sabha does not effectively provide.

The fifth change is the entrenchment of Article 356, the President's Rule provision, in a way that makes its application subject to clear constitutional conditions and to immediate automatic judicial review by the constitutional court, rather than the current regime under which the constitutional court reviews President's Rule only on a petition by the displaced government, often after months of central rule have already occurred.

9.5 The New Constitution and the Question of British Constitutional Free India

The title of this section is deliberately provocative, and the term "British Constitutional Free India" deserves explanation. It does not mean the rejection of every institution, concept, or value that has a British origin in Indian constitutional history. The parliamentary system of government, properly reformed, is not inherently colonial. The common law tradition, properly adapted to Indian conditions, has produced genuine legal achievements including the public interest litigation system and the expanded right to life jurisprudence. The adversarial system of trial, despite its inadequacies, provides a framework for the testing of evidence that has value.

What "British Constitutional Free India" means in this context is the liberation of the Indian constitutional imagination from the unconscious assumption that the British constitutional model is the natural or default form of democratic governance, and the associated liberation from the colonial administrative philosophy that treats citizens as subjects to be managed rather than sovereign members of the community who create and control the state.

This liberation requires, in the first instance, a different approach to the question of constitutional sources. A new Indian constitution should draw on constitutional traditions from across the world, not merely from the Westminster tradition and the American constitutional model. The Swiss system of direct democracy, the German model of cooperative federalism, the South African model of justiciable social rights, the Nordic model of constitutional welfare state obligations, the Brazilian model of participatory budget processes, the Indigenous constitutional

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traditions of the Americas and of India's own tribal communities: all of these are resources for a constitutional imagination that is genuinely freed from the colonial inheritance.

But beyond the question of constitutional sources, the liberation also requires a different approach to the question of what the state is for. The colonial state was for the administration of a subject population and the extraction of resources. The post-colonial Indian state, in its constitutional conception, has been torn between this administrative inheritance and the democratic aspiration of a state that serves and is accountable to its citizens. The tension between these two conceptions, the administrative state and the democratic state, has produced the contradictions and failures documented throughout this textbook.

A genuinely British Constitutional Free India, in the sense intended here, is a country whose constitutional order is grounded entirely in the aspiration of democratic self-governance, in the recognition of the equal dignity and sovereignty of every citizen, in the understanding that the state is the creation and servant of the people rather than their master, and in the institutional design that follows from this understanding rather than from the institutional design of colonial administration. This is not a utopian aspiration. It is the constitutional aspiration that the Preamble of the current Constitution formally expresses but the body of the Constitution structurally undermines.

The argument of this textbook is that the time has come to take the aspiration seriously, to examine with honesty the degree to which the current constitutional framework falls short of it, and to begin the serious democratic work of building a constitutional order that genuinely realizes it.

CHAPTER TEN: CONTROVERSIES, PRECEDENTS, AND THE CONTEMPORARY CONSTITUTIONAL MOMENT

10.1 The Supreme Court's Recent Jurisprudence and Its Contradictions

The Supreme Court of India in the period from 2019 to 2025 has produced a body of constitutional jurisprudence that contains significant internal tensions and that reflects the difficulties of an institution that is both part of the constitutional system it adjudicates and the custodian of the constitutional values that system is supposed to embody.

On the one hand, the Court has produced judgments of genuine constitutional significance in the direction of rights protection. The Right to Privacy judgment of 2017 (K.S. Puttaswamy) established a comprehensive constitutional framework for privacy as a fundamental right. The judgment in Association for Democratic Reforms v. Union of India (2024) striking down the electoral bonds scheme was a significant act of constitutional courage that held the executive to account on a matter of fundamental democratic importance. Judicial interpretation in 2025 reshaped equality and institutional accountability in significant ways. Usthadian

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The judgment in State of Tamil Nadu v. Governor of Tamil Nadu (2023), which held that the Governor cannot indefinitely withhold assent to Bills passed by the state legislature, was an important reaffirmation of the constitutional principle that the Governor's role in the state constitutional system is constitutionally defined and cannot be exercised as a tool of central political control. The Governor controversy generated significant constitutional turbulence during this period. Usthadian

On the other hand, the Court's record on several matters of acute constitutional importance has been seriously inadequate. The delay in adjudicating the constitutional validity of the Citizenship Amendment Act, which has been challenged by over two hundred petitioners since shortly after its enactment in December 2019, is a constitutional dereliction. The Court's initial deference during the COVID-19 pandemic, when the constitutional rights of millions of migrant workers and ordinary citizens were being dramatically affected by governmental decisions of questionable legality, contrasts unfavorably with the Court's willingness to intervene urgently in matters affecting the rights of well-resourced litigants.

The judgment upholding the abrogation of Article 370 has been criticized by constitutional scholars including Faizan Mustafa, Suhrith Parthasarathy, and others for accepting a constitutional interpretation that allowed the executive to nullify a constitutional provision through a circular process: using the President's Rule mechanism to assume the functions of the Jammu and Kashmir legislative assembly, and then using the President's power to extend constitutional provisions to J&K (in exercise of the assumed assembly's functions) to effectively nullify Article 370. Critics argue that this reasoning allowed the executive to do indirectly what it could not do directly, to amend the Constitution through executive action rather than through the constitutional amendment process.

10.2 The Electoral Reforms Debate and the Constitutional Future of Democracy

The question of electoral reform is among the most urgent in Indian constitutional discourse, and the proposals under discussion reflect fundamentally different visions of what democratic governance requires.

The One Nation One Election proposal, discussed in Chapter One, is the most structurally significant of the electoral reform proposals, and its constitutional implications for federalism and for democratic accountability have been analyzed there. But there are other electoral reform debates of constitutional importance.

The question of proportional representation has been raised repeatedly in Indian electoral reform discourse. The current first-past-the-post system, as noted earlier, systematically distorts the translation of popular votes into parliamentary seats. In the 2024 general election, the BJP won approximately 240 seats with around 36 percent of the popular vote, while the Congress won approximately 99 seats with around 21 percent. A proportional system would have produced a significantly different result. The constitutional case for proportional representation is grounded in the principle that free and fair elections require that the composition of Parliament reasonably reflect the distribution of political preferences in the electorate.

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The constitutional question is whether changing the electoral system requires a constitutional amendment. The provisions for elections to the Lok Sabha and state assemblies are contained partly in the Constitution (Articles 81 and 170 for the composition of the houses, Articles 325 to 329 for electoral law) and partly in ordinary legislation (the Representation of the People Act). A change in the electoral system would require both constitutional amendment and legislative reform, making it a complex undertaking that would require broad political consensus.

The reform of the anti-defection law is another urgent electoral and constitutional reform. The Tenth Schedule, as argued in Chapter One, has functionally eliminated the constitutional mechanism of parliamentary accountability by making legislators accountable to party leaders rather than to their constituents. The reform of the anti-defection law to apply only to votes of confidence and money bills, and not to other legislative votes, would partially restore legislative independence. The abolition of the whip system for ordinary legislative votes would go further toward genuine parliamentary accountability.

The 2025 constitutional amendment bills proposed removing ministers detained for over 30 days for serious crimes, amid debates on constitutional integrity, legality, and political misuse. The bills proposed significant amendments to Articles 75, 164, and 239AA. Vision IAS These proposals, whatever their stated rationale, raise acute constitutional questions about the separation of powers and the vulnerability of elected governments to removal through the mechanism of criminal charges managed by central government agencies.

Critics of the bills argued that by triggering removal solely based on arrest and detention, the bills effectively granted the power to unseat the Prime Minister or a Chief Minister to the permanent executive, which may weaken separation of powers, disrupt the chain of democratic accountability, and enable the bureaucracy or investigative agencies to influence the tenure of elected governments. PRSIndia

10.3 The Bharatiya Nyaya Sanhita and the Decolonization That Was Not

The replacement of the Indian Penal Code, the Code of Criminal Procedure, and the Indian Evidence Act by the Bharatiya Nyaya Sanhita, the Bharatiya Nagarik Suraksha Sanhita, and the Bharatiya Sakshya Adhiniyam, enacted in 2023 and implemented from July 2024, deserves constitutional analysis as the most significant reform of criminal law in India's post-independence history.

The government presented this reform as a genuine decolonization of the criminal justice system, replacing colonial-era codes with new laws that reflect Indian values and constitutional commitments. The change of names from English to Sanskrit was symbolic of this decolonization narrative. The incorporation of provisions relating to organized crime, terrorism, and cybercrimes was presented as an updating of the law for the twenty-first century.

Constitutional lawyers and scholars have offered a more skeptical assessment. The substantive changes in the new codes are considerably less dramatic than the change in nomenclature suggests. The structure of the offenses, the framework of criminal procedure, the allocation of powers between the police and the judiciary in the investigative phase, the bail provisions, the

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evidence rules: all of these remain recognizably similar to what they were under the colonial codes. The new provision on "acts against the sovereignty, unity and integrity of India" in Section 152 of the BNS, which replaced the sedition provision of Section 124A of the IPC, is argued by critics to be even broader in its potential application than the original sedition provision, extending to "acts that endanger" India's sovereignty without the requirement of the direct incitement to violence that judicial interpretation had partially read into the original provision.

Section 152 of the Bharatiya Nyaya Sanhita has been challenged as sedition in disguise, drafted in even broader and vaguer terms. Critics argue that it continues to criminalise acts endangering the sovereignty, unity, and integrity of India without clear thresholds. Universal Group Of Institutions

The constitutional decolonization of the criminal law that India genuinely needs is not a change in names but a change in the fundamental architecture of the relationship between the state and the accused. It requires a criminal procedure that genuinely presumes innocence, that gives the accused effective access to counsel from the moment of arrest, that limits the investigative powers of the police through judicial oversight, that requires speedy trial as a constitutional obligation with effective consequences for its violation, and that ensures that the poorest and most marginalized accused has the same effective access to the constitutional protections of criminal procedure as the richest and best-connected.

The Bharatiya Nyaya Sanhita, in its current form, does not deliver this. It represents a renaming rather than a reimagining. The genuinely decolonized criminal law that India needs would require a much more fundamental reconception, one that takes as its starting point the constitutional values of dignity, liberty, and equality and builds a criminal justice framework that is designed to realize those values rather than to manage the populations that threaten state authority.

10.4 The Constitutional Moment Ahead: What History Demands

This textbook has traced, across three Parts, the colonial origins, structural failures, institutional pathologies, and social consequences of the Indian constitutional order. The argument it has built is not an argument of despair but an argument of diagnosis, and diagnosis, undertaken honestly and rigorously, is the necessary precondition of genuine remedy.

The constitutional moment that India faces in the third decade of the twenty-first century is defined by several converging pressures. The pressure of a majoritarian political project that is using the constitutional framework to advance a vision of India as a Hindu nationalist state rather than as a pluralist democracy. The pressure of a deepening economic inequality that is producing political strains that formal democratic institutions are struggling to accommodate. The pressure of an ecological crisis, particularly the water stress and air pollution crises that affect hundreds of millions of people, that the existing constitutional framework has not adequately addressed. The pressure of technological change, in the domains of digital surveillance, artificial intelligence, and social media, that creates new constitutional challenges for which the existing framework was not designed and has not been adapted.

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These pressures do not necessarily lead to a new constitution. They might lead instead to the kind of democratic backsliding that has occurred in other countries under similar conditions, a gradual erosion of constitutional protections through a succession of individually defensible but cumulatively devastating institutional changes, until the formal apparatus of constitutional democracy persists while its substantive content has been hollowed out.

But they might also lead, if the social movements, civil society organizations, legal scholars, political parties, and citizens committed to genuine constitutional democracy can articulate and organize around a coherent constitutional vision, to a genuine constitutional renewal. The renewal would not necessarily take the form of a new constitutional document, though this textbook has argued that ultimately a new constitutional document is what is needed. It might take the form of a profound constitutional rethinking, embodied in a new politics that demands and produces genuine institutional reform, substantive enforcement of existing constitutional rights, and the development of new constitutional mechanisms for accountability, representation, and social justice.

The intellectual tools for this renewal are available. The jurisprudential traditions of Ambedkarite social constitutionalism, Rawlsian justice, Habermasian discourse democracy, and living constitutionalism provide frameworks for thinking about what a genuinely just constitutional order for India would look like. The comparative constitutional experiences of South Africa, Colombia, Germany, and the Nordic countries provide models of institutions and mechanisms that have worked in practice. The historical record of the Indian constitutional order provides a rigorous account of what has failed and why.

What remains is the political will, the social mobilization, and the institutional design to translate intellectual clarity into constitutional change. This textbook is a contribution to the intellectual part of that project. The political and social parts must be the work of the people of India themselves, in the exercise of their constituent power as the sovereign from whom the Constitution derives, or should derive, its authority.

The Constitution of India begins with the words "We, the People of India." After seven decades, it is time to ask whether the constitutional order those words inaugurate is genuinely of the people, by the people, and for the people, or whether it has been of the inheritors of colonial administration, by the elites that the colonial system empowered, and for the perpetuation of a structure of power that the people of India, in their millions, were promised to have overcome but have not.

The answer to that question, pursued honestly, leads inevitably to the conclusion of this Part: that the Indian constitutional order requires not merely reform but renewal, not merely amendment but reconstitution, not merely better governance within the existing framework but a new framework that is genuinely adequate to the aspirations, the diversity, and the sovereign dignity of the people of India.

CONCLUDING REFLECTIONS ON PART THREE: THE DIAGNOSIS STATED

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Part Three has covered an enormous range of ground: executive dominance and the structural conditions for prime ministerial authoritarianism, the weaponization of criminal law through the UAPA and related instruments, the constitutional architecture of religious majoritarianism and its implications for secular democracy, the institutionalization of corruption in the constitutional framework, the systematic victimization of various social groups by the operation of the constitutional order, the foreign policy deficit rooted in the constitutional concentration of foreign policy power without accountability, the continuing legacy of British colonial constitutional design, and the theoretical and institutional frameworks for a new constitutional settlement.

Across all of this terrain, several conclusions have emerged consistently.

The first is that the structural problems of the Indian constitutional order are not accidental but designed, not contingent but systematic, and not easily addressable through incremental reform. They are built into the foundational architecture of the document, into the conceptual vocabulary in which it was drafted, and into the institutional traditions it established.

The second is that the costs of these structural problems are borne predominantly by those who were least represented in the process that created them: the poor, the Dalit, the Adivasi, the woman, the Muslim, the linguistic minority, the political dissenter. The constitutional order has delivered significant benefits to the privileged, the propertied, and the educated. It has delivered far less to the majority, and it has actively victimized significant sections of the population through the operation of institutions that are constitutionally authorized and constitutionally unaccountable.

The third is that the reform of the constitutional order is not merely a legal or institutional matter but a political and social one. Constitutional texts change when political will and social power combine to demand and sustain change. The legal and institutional frameworks analyzed in this Part are not inevitable: they are political choices, made by those with the power to make them, and they can be changed by those who can accumulate and exercise the power to change them.

The fourth is that the argument for a new constitutional settlement, while it has a theoretical and normative dimension, is ultimately grounded in the practical experience of seven decades of constitutional operation. It is not an abstract aspiration but a response to the concrete, documented, ongoing failures of the existing order to deliver on its own promises of justice, liberty, equality, and fraternity.

Part Four of this textbook will examine the specific constitutional provisions most urgently in need of reform, will analyze in detail the various reform proposals that have been advanced by constitutional scholars, law commissions, political parties, and civil society organizations, and will develop a more detailed blueprint for the institutional changes that a reformed or new constitutional order in India should embody.

End of Part Three

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The textbook continues in Part Four with: The Reform Agenda in Detail: Specific Proposals, Legislative Investigations, and Institutional Blueprints for a Just Constitutional Order.

PART FOUR: THE REFORM AGENDA IN DETAIL

Specific Proposals, Legislative Investigations, and Institutional Blueprints for a Just Constitutional Order

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PREFACE TO PART FOUR

The preceding three parts of this textbook have established the diagnosis. Part One traced the colonial genome of the Indian Constitution and the structural inheritance of dominion that pervades every institutional arrangement of the post-colonial state. Part Two examined the jurisprudence of sovereign fragility, the Emergency, the paradoxes of the basic structure doctrine, and the silences of a constitution that said much but chose carefully what to leave unsaid. Part Three moved into the operational realities of the current constitutional moment, charting the rise of executive authoritarianism, the weaponization of criminal law, the architecture of religious majoritarianism, the institutionalization of corruption, the systematic victimization of India's most marginalized communities, the reckless foreign policy deficit rooted in unaccountable executive concentration, and the continuing haunting of the British colonial legacy.

Part Four now arrives at the hard, necessary, and ultimately hopeful work of construction. A textbook that only diagnoses illness without proposing remedy is ultimately a work of despair dressed in the language of analysis. This Part refuses that despair. It proceeds from the conviction that reform is not merely possible but constitutionally obligatory, that the people of India have the right and the power to demand a constitutional order that genuinely serves them, and that the intellectual tools for building such an order exist, in comparative constitutional experience, in the jurisprudential traditions of this country and the world, in the mountains of

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reform proposals that law commissions, civil society organizations, academic scholars, and democratic movements have produced over seven decades, and in the lived knowledge of the communities that have borne the costs of constitutional failure most heavily.

This Part will be demanding. Constitutional reform is not simple. Every institution that requires reconstruction has defenders whose interests it serves. Every power arrangement that requires redistribution is resisted by those who currently hold power. Every right that requires genuine enforcement costs money that some would prefer not to spend. The politics of constitutional reform is always a politics of conflict, and this textbook does not pretend otherwise.

But the demands are not insuperable. Other countries, facing constitutional failures as severe as India's, have achieved fundamental constitutional renewal. The analytical and normative frameworks for reform, assembled across the previous three parts of this textbook and deepened here, provide a coherent basis for the specific proposals that follow. The comparative constitutional experience of countries that have achieved genuine judicial independence, genuine federalism, genuine social rights, and genuine electoral accountability provides evidence that these are achievable goals rather than utopian fantasies.

The structure of Part Four moves through ten chapters. Each chapter takes a domain of constitutional life identified in Parts One through Three as a site of fundamental failure, analyzes the specific reform proposals that have been advanced, evaluates those proposals against the jurisprudential and comparative frameworks assembled in the earlier parts, and develops a detailed recommendation. The concluding chapter addresses the question of constitutional process itself: how does a constitutional reform of the depth and breadth argued for in this textbook become politically possible, and what institutional mechanisms are necessary to ensure that the process of constitutional renewal is itself genuinely democratic, representative, and legitimate?

The audience for this Part is broad. It speaks to the law student who is learning to see the Indian constitutional order not merely as a system to be mastered but as a human construction to be evaluated and, where found wanting, transformed. It speaks to the practising lawyer who engages with the constitutional system daily and who sees its failures not in abstract analysis but in the concrete frustrations of clients and cases. It speaks to the political scientist who studies the institutional dynamics that the constitutional framework creates. It speaks to the activist who is trying to use the law to change the conditions that produce injustice. And it speaks to the citizen who has the right, and the power, to demand more from the state that the Constitution creates in her or his name.

We the People of India. After seventy-five years, it is time to mean it.

CHAPTER ONE: RESTRUCTURING EXECUTIVE POWER - FROM ELECTED MONARCHY TO ACCOUNTABLE GOVERNANCE

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1.1 The Problem of Prime Ministerial Supremacy and the Constitutional Vacuum of Accountability

The most fundamental structural problem of the Indian constitutional order, as established in Part Three, is the concentration of effective governing power in the person of the Prime Minister and the small circle of political advisors around her or him. This concentration is not a corruption of the constitutional design but an expression of it. The Westminster parliamentary model that the Constitution adopted, without the countervailing conventions and informal institutional constraints that had developed over centuries of British practice, creates a system in which the Prime Minister who commands a parliamentary majority has, in the Indian institutional context, a degree of unchecked power that goes well beyond what the British Prime Minister possesses in practice.

The British Prime Minister is constrained by a relatively robust parliamentary culture, by a free press of considerable institutional strength, by a civil service with strong traditions of professional independence, by a politically active opposition with effective parliamentary resources, and by a system of parliamentary committees with real scrutiny powers. India inherited the formal structure of Westminster governance but not these surrounding constraints. The Indian parliamentary culture has been progressively weakened by the anti-defection law, which makes legislators into voting instruments of party leadership rather than independent representatives of their constituents. The press has been increasingly compromised by ownership concentration, advertising dependency on government, and the growing use of the criminal law against critical journalists. The civil service has been subjected to increasing political interference in postings and promotions. Parliamentary committee processes have been systematically bypassed through the mechanism of certification of bills as money bills (allowing the Rajya Sabha to be overridden), through ordinance promulgation that bypasses parliamentary deliberation, and through the use of Joint Parliamentary Committees on politically selected matters while avoiding them on others.

The result is a constitutional framework that formally provides for democratic accountability through parliamentary governance but that in practice operates as what constitutional scholars have called a "delegative democracy": a system in which the electorate delegates full power to a leader at the moment of election and has virtually no mechanism to constrain or recall that power between elections. This model, analyzed by the Argentine political scientist Guillermo O'Donnell in his influential theoretical work on Latin American democracies that shared structural characteristics with the Indian system, produces governance that is responsive to electoral pressures at election time but largely unaccountable between elections.

The reform of this structural problem requires attention to three dimensions: the reform of parliamentary processes to restore genuine parliamentary oversight of the executive, the reform of the constitutional relationship between the Prime Minister and the bureaucracy to rebuild genuine bureaucratic independence, and the reform of the constitutional provisions relating to emergency powers and legislative bypass mechanisms to prevent the executive from circumventing parliamentary accountability in crisis conditions.

1.2 Parliamentary Reform: Restoring the Legislature as the Real Seat of Accountability

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The Indian Parliament has progressively declined as an institution of genuine deliberation and accountability. The data on parliamentary functioning compiled by the PRS Legislative Research organization shows consistent and deeply troubling trends: declining hours of parliamentary functioning per session, increasing use of the anti-defection whip to force bloc voting without genuine debate, passage of important legislation without adequate debate and in some cases without any debate, declining participation in parliamentary committees, and the systematic bypass of the ordinary legislative route through ordinance promulgation.

The Twenty-Fifth Amendment to the House of Commons' Procedure, the British parliamentary reform of the early 2000s under which the select committee system was strengthened, provides one comparative model for parliamentary reform. The German Bundestag's committee system, in which legislative committees have genuine and well-resourced scrutiny powers, provides another. The United States Congressional oversight system, despite its many pathologies, demonstrates that legislative committees can exercise genuine oversight of executive agencies when they are properly resourced and when committee membership is selected for subject matter expertise rather than pure party loyalty.

The constitutional reform of Parliament in India requires, as a minimum, the following changes. First, Article 107 of the Constitution, which governs the introduction and passage of bills, should be amended to require that all bills be referred to the relevant standing committee for examination and report before they are taken up for debate in the full house, with an exemption available only on a supermajority resolution of the house in genuine emergency situations. This requirement would eliminate the current practice of passing legislation at high speed with minimal deliberation, a practice that has been used extensively in recent years to enact legislation of profound constitutional significance without adequate parliamentary scrutiny.

Second, the certification of bills as money bills under Article 110 of the Constitution should be made subject to judicial review. The current position, established by the majority judgment in Rajya Sabha v. Speaker, Lok Sabha (the Aadhaar case related proceedings), is that the Speaker's certification of a bill as a money bill is not subject to judicial scrutiny on the merits, only to review on grounds of manifest illegality. This has allowed the government to bypass the Rajya Sabha by certifying bills as money bills that do not satisfy the constitutional definition in Article 110. The Aadhaar Act, the Finance Act amendments that amended the Foreign Contribution Regulation Act and the Prevention of Money Laundering Act, these are instances where the certification route has been used in ways that constitutional scholars have found deeply problematic. Judicial review of money bill certification, to ensure that only bills genuinely meeting the Article 110 criteria are certified as such, would restore a genuine bicameral check on legislation.

Third, the anti-defection law contained in the Tenth Schedule requires fundamental reform. The current position, under which a member of Parliament or a state legislature is disqualified if she or he votes against the direction of her or his political party on any matter, transforms legislators from representatives of their constituents into delegates of their party leadership. The constitutional theory of representation, developed from Burke's famous Bristol speech through J.S. Mill's reflections on representative government and into the modern deliberative democratic theory of Habermas, holds that a representative exercises independent judgment on behalf of

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those she or he represents rather than merely executing instructions. The anti-defection law, in its current form, is constitutionally incompatible with this understanding of representation.

The reform proposed by numerous scholars and constitutional commissions is to limit the operation of the anti-defection law to votes of confidence in the government and to money bills. On all other legislative matters, members should be free to vote according to their judgment without fear of disqualification. This reform would, over time, rebuild the deliberative character of Parliament by creating space for genuine cross-party deliberation on substantive legislative questions, and would rebuild the connection between legislators and their constituents by freeing legislators to represent their constituents' interests rather than their party's political strategy.

Fourth, the constitutional provisions relating to the summoning and dissolution of Parliament should be reformed to prevent the executive from using these powers to avoid parliamentary accountability. Article 85, which gives the President (on the advice of the Council of Ministers) the power to summon and dissolve Parliament, has been used to create long inter-session gaps during which parliamentary oversight of the executive is unavailable. A constitutional amendment requiring Parliament to sit for a minimum number of days per year, and requiring that any gap between sessions not exceed a specified maximum, would establish a floor of parliamentary functioning below which the executive cannot drive it.

1.3 The Constitutional Reform of the Civil Service

The All India Services, established under Article 312 of the Constitution, were designed by the framers as a safeguard of national unity and as a mechanism for maintaining administrative competence and continuity across changes of government. The vision was of a permanent, professional, politically neutral civil service that would implement government policy without regard to which political party was in power, and whose security of tenure would insulate it from political pressure.

This vision has been progressively undermined by the politicization of civil service postings and promotions. The evidence for this politicization is extensive and comes from multiple sources: the testimonies of retired civil servants in memoirs and public lectures, the data on the frequency with which senior civil servants are transferred at the pleasure of political bosses (sometimes multiple times in a single year), the reports of parliamentary committees and the Administrative Reforms Commission, and the academic literature on Indian public administration from scholars including Pratap Bhanu Mehta and Anirudh Krishna.

The constitutional reform of the civil service requires, first, the establishment of a constitutionally independent Civil Service Board with authority over senior postings and transfers, replacing the current system of executive discretion over these matters. The Law Commission and several expert committees have made this recommendation, and the Supreme Court issued directions in T.S.R. Subramanian v. Union of India (2013) requiring the establishment of such boards, but implementation has been deeply inadequate because the political executive has resisted any structural constraint on its ability to use postings as political instruments.

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The constitutional reform requires, second, the strengthening of the constitutional protection of civil servants against arbitrary transfer and posting. Article 311, which provides protection against dismissal and reduction in rank, does not provide protection against lateral transfers that effectively punish civil servants for giving unpopular advice or refusing to comply with politically motivated instructions. A constitutional amendment establishing that transfers of senior civil servants must be authorized by the independent Civil Service Board on stated grounds, subject to judicial review, would provide genuine protection for professional independence.

Third, the constitutional framework should be amended to remove the provisions that allow the Centre to direct the posting of Indian Administrative Service officers in state government positions in ways that override state government preferences. The current system, under which the Centre retains ultimate authority over the posting of IAS officers in state governments, means that even where state governments want to post officers who are professionally effective and who have demonstrated commitment to the state's constitutional functions, the Centre can interfere to post officers whose political reliability is preferred. This arrangement is inconsistent with genuine federalism and should be reformed through a constitutional amendment giving state governments full authority over the posting of IAS officers serving in their state, subject to the independent Civil Service Board's oversight of transfers that appear to be punitive or politically motivated.

1.4 The 130th Constitutional Amendment Bill 2025 and the Constitutional Paradox of Accountability Instruments

The Constitution (One Hundred and Thirtieth Amendment) Bill, 2025 was introduced in the Lok Sabha on 20 August 2025. The bill seeks to provide for the removal of the Prime Minister, Chief Ministers, and other Ministers if they are arrested and detained for thirty consecutive days on charges punishable by imprisonment of five years or more. Wikipedia This bill deserves careful constitutional analysis because it illustrates, with particular clarity, the gap between the stated rationale of an accountability measure and its actual constitutional and political implications.

The bills propose that the Prime Minister, Chief Minister, or a Minister be removed from office automatically if they are arrested and detained for 30 consecutive days. This applies to detention for an offence punishable with imprisonment of five years or more. This may allow for removal of elected governments or Ministers only on accusations and before a substantial finding of guilt, as this action may involve only the investigative agencies, with the court checking validity of arrest and eligibility of bail, without judging the likelihood of guilt. PRSIndia

The constitutional analysis of this bill reveals a fundamental paradox. On the surface, the bill appears to be an accountability measure: it prevents persons under serious criminal detention from exercising the powers of high executive office. This rationale has surface appeal in a political system where, as the bill's proponents noted, Chief Ministers have indeed continued to govern from prison without resigning. The case of Arvind Kejriwal, who did not resign as Chief Minister of Delhi when he was arrested by the Enforcement Directorate in 2024, was the immediate political context that produced this bill.

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But the deeper constitutional analysis reveals serious problems. By triggering removal solely based on arrest and detention, the Bills effectively grant the power to unseat the Prime Minister or a Chief Minister to the permanent executive. These bills may violate four features of the basic structure of the Constitution: parliamentary form of democracy, separation of powers, federalism, and the rule of law. PRSIndia

The permanent executive, in the form of the investigative agencies that effect the arrest, is constitutionally subordinate to the elected executive. If the arrest of a Chief Minister by a central investigative agency can automatically remove that Chief Minister from office, then the central government, through its control of investigative agencies, acquires an effective power to remove elected state governments that is without constitutional precedent and without constitutional justification. The power to dismiss a state government is already constitutionally regulated through the Article 356 mechanism. The 130th Amendment Bill would create a parallel and easier mechanism for the same functional result, requiring not even the formal procedural requirements of Article 356 but merely a thirty-day detention by a centrally controlled investigative agency.

The theoretical framework for understanding this problem draws on the principle of the separation of powers as analyzed in constitutional theory. The separation of powers requires not merely that the legislative, executive, and judicial branches be constitutionally distinct, but that each branch be protected against the ability of another branch to use its own constitutional powers to undermine the functioning of the first. The 130th Amendment Bill, by allowing the investigative arm of the central executive to trigger the removal of elected state executives, violates this principle at its foundation.

The jurisprudential literature on the separation of powers in India, from H.M. Seervai's comprehensive analysis through the more recent work of scholars including Gautam Bhatia and Uday Raj Rai, consistently identifies the protection of elected executive authority from non-electoral removal as a basic structural principle. The basic structure doctrine of Kesavananda Bharati protects parliamentary democracy as one of the elements of the basic structure. The removal of an elected Prime Minister or Chief Minister through the mechanism of a thirty-day detention, effected by investigative agencies under the control of the opposing political party, is not consistent with the basic structure of parliamentary democracy.

The lesson from this episode is not that there is no accountability problem with elected officials who are in conflict with the law. There clearly is such a problem, and the spectacle of Chief Ministers governing from prison is constitutionally and morally unacceptable. The lesson is that the accountability mechanism proposed by the 130th Amendment Bill is the wrong solution, and that the right solution requires a different constitutional approach: one that creates a genuinely independent prosecution and investigative system, that establishes clear and judicially reviewable standards for the disqualification of elected officials who have been found guilty of serious offenses after due process, and that does not create a mechanism that can be weaponized by the central executive against state governments of opposition parties.

1.5 Toward a Directly Accountable Presidency: The Theoretical Case for Structural Reform

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The question of whether India should retain its parliamentary system of government or adopt a presidential or semi-presidential model is one of the most fundamental in Indian constitutional reform discourse. It deserves careful analysis rather than ideological reflex.

The standard arguments for retaining the parliamentary system are familiar. Parliamentary government provides continuous accountability of the executive to the legislature and, through it, to the electorate. It prevents divided government of the kind that has produced political paralysis in the American presidential system. It is consistent with Indian political culture and practice developed over seventy-five years. And it provides a mechanism for changing the government without waiting for a fixed electoral term when the current government has lost the confidence of the legislature.

These arguments have genuine force. But they must be weighed against the demonstrated pathologies of the parliamentary system in the Indian context: the concentration of power in the Prime Minister that the Westminster model enables and amplifies in the Indian institutional context, the weakness of legislative oversight that the anti-defection law and the Speaker's partisan role create, the instability of coalition governments that has characterized large parts of Indian parliamentary history, and the structural vulnerability of parliamentary democracy to capture by a determined majoritarian force with a stable parliamentary majority.

The semi-presidential model, as practiced in France and in various post-communist European states, distributes executive power between a directly elected President and a Prime Minister who is accountable to the legislature. The French Fifth Republic, established under the 1958 constitution designed by Charles de Gaulle, was explicitly designed to strengthen the executive and to prevent the legislative instability of the Fourth Republic. It has produced a concentration of executive power in the Presidency that, while it may be appropriate for France, would replicate the problem of executive concentration rather than solving it.

The more promising alternative to pure parliamentarism in the Indian context may be what comparative constitutional scholars have called cooperative or constrained parliamentarism: a parliamentary system in which the executive is held to account not merely by the confidence vote mechanism but by a network of institutional constraints including a genuinely independent judiciary with robust constitutional review powers, a constitutional anti-corruption commission with independent prosecutorial authority, a genuinely powerful upper house representing state interests, a strengthened parliamentary committee system with investigative powers, and a free and independent press protected by strong constitutional guarantees.

This model does not require abandoning the parliamentary system. It requires surrounding the parliamentary system with the institutional infrastructure that makes parliamentary accountability genuine rather than formal. The Indian constitutional order already has many of the formal elements of this infrastructure, including a constitutional court, an election commission, a comptroller and auditor general, and a parliamentary committee system. The reform agenda requires strengthening each of these institutions in ways that make them genuinely independent of the executive rather than formally independent and functionally dependent.

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The specific constitutional reforms required under each of these headings are developed in the chapters that follow.

CHAPTER TWO: THE JUDICIAL REFORM CRISIS - BUILDING AN INDEPENDENT AND ACCOUNTABLE JUDICIARY

2.1 The Dimensions of Judicial Crisis in Contemporary India

The International Commission of Jurists, in its report titled "Judicial Independence in India: Tipping the Scale," published in February 2025, provided the most authoritative recent international assessment of the state of India's judiciary. The report highlights the erosion of judicial independence in India, applying critical indicators based on international law and standards on the rule of law and the independence of the judiciary. These include the selection and appointment of judges, transfer of judges, judicial accountability mechanisms, post-retirement employment of judges, and judicial administration pertaining to listing and allocation of cases in the Supreme Court. The ICJ found that while India has a well-deserved reputation, historically, for maintaining a strong and independent judiciary on the whole, the conditions needed for judicial independence and the fair and effective administration of justice have been fracturing. International Commission of Jurists

The crisis of the Indian judiciary is multidimensional. It encompasses the crisis of appointments (the collegium system's opaqueness and lack of democratic accountability), the crisis of accountability (the absence of effective mechanisms for addressing judicial misconduct short of impeachment), the crisis of access (the structural inaccessibility of the courts to the majority of the population), the crisis of delay (a case backlog that as of 2025 stands at over fifty million pending cases), and the crisis of independence (the various formal and informal mechanisms through which the executive maintains influence over judicial decisions of political significance).

Each of these dimensions requires specific constitutional and institutional reform. But before arriving at the specific proposals, the theoretical framework for judicial reform must be established.

2.2 Theories of Judicial Independence: The Necessary Balance

The constitutional theory of judicial independence draws on three distinct but related philosophical traditions. The first is the separation of powers tradition, associated with Montesquieu and extended through the American constitutional tradition, which holds that the independence of the judiciary is a structural requirement of a constitutional order based on checks and balances. A judiciary that is dependent on the executive or the legislature cannot effectively check their exercise of power.

The second tradition is the rule of law tradition, associated with the English legal theorist A.V. Dicey and more recently developed by Ronald Dworkin, Joseph Raz, and John Finnis, which holds that the rule of law requires that legal disputes be decided by persons who are independent

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of the parties, immune from political pressure, and bound by the norms of the legal system rather than by the preferences of the powerful. Judicial independence, in this tradition, is not merely an institutional preference but a constitutive requirement of the rule of law itself.

The third tradition is the democratic deliberation tradition, associated with Habermas and with the procedural theory of constitutional democracy, which holds that judicial independence is valuable precisely because courts can articulate and apply constitutional norms that constrain democratic majorities, protecting the conditions of democratic deliberation itself. This tradition introduces a tension: courts that are too independent of democratic accountability may exercise their power in ways that are insufficiently responsive to the constitutional values of a democratic community, while courts that are too dependent on democratic majorities cannot effectively protect the constitutional rights of minorities against majoritarian encroachment.

Resolving this tension is the central challenge of judicial reform in any constitutional democracy. In the Indian context, the pendulum has swung, over the course of constitutional history, between periods of excessive executive control over the judiciary (the Emergency period and its aftermath) and periods of excessive judicial autonomy (the collegium era from 1993 to the present). Neither extreme is constitutionally satisfactory.

The reform proposal that most effectively navigates this tension, in the Indian constitutional context, is what scholars have called the "independent appointments with accountable conduct" model: a model in which judges are appointed through a process that is genuinely independent of direct political control but that involves diverse stakeholders beyond the sitting judiciary, and in which judges' conduct in office is subject to effective accountability mechanisms that are themselves independent of both the judiciary and the executive.

2.3 The Collegium Crisis: Evidence and Analysis

According to the India Justice Report 2025, between 2020 and 2024, pending cases in Indian courts surged nearly 20 percent. Despite this sharp rise, judicial vacancies have remained persistently high, with High Courts operating with about 33 percent of sanctioned posts unfilled. India's judge-to-population ratio remains among the lowest in the world, with only 21 judges per million people, less than half of the 50 judges per million benchmark recommended by the Law Commission back in 1987. Drishti IAS

The collegium system, as established through the Second Judges Case (Supreme Court Advocates-on-Record Association v. Union of India, 1993) and developed in the Third Judges Case (Presidential Reference, 1998), vests the primary authority for judicial appointments in a collegium of the five senior-most judges of the Supreme Court. This system was designed to insulate judicial appointments from executive control. Its proponents argue that it has largely achieved this purpose, and that the independence of the Indian Supreme Court in the post-collegium era has been greater than it was in the period when the executive had more direct control over appointments.

The selection of judges is formally and structurally safeguarded against external influence and interference by vesting the power with the judiciary itself, specifically with the Collegium.

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However, there is a lack of a clear and transparent procedure of selection and of objective and predetermined criteria based on competence, merit, ability, experience and integrity. There is therefore an absence of adequate safeguards against selection for improper means and motive. International Commission of Jurists

The 2025 cash-in-outhouse controversy, in which large sums of unaccounted cash were discovered at the residence of a sitting Delhi High Court judge during a fire emergency response, crystallized public concern about judicial integrity and about the adequacy of the mechanisms available to address it. The Collegium led by Chief Justice Khanna recommended the transfer of Justice Varma from the Delhi High Court to Allahabad High Court. Further, CJI Khanna directed that no judicial work should be allotted to Justice Varma until an inquiry committee concluded its investigation. Post the controversy, there have been conversations about transparency in judicial appointments, with discussion about bringing back the National Judicial Appointments Commission. Supreme Court Observer

The ICJ's 2025 report identified several specific deficiencies in the current system. Other than impeachment, judicial accountability mechanisms in India are insular and ineffective, making real accountability near impossible. The practice of post-retirement employment of judges, particularly when the appointment is carried out at the discretion of the government, casts a shadow of perception of bias on the concerned judge while at the same time allowing for indirect executive influence over the judge while in office. International Commission of Jurists

The critique of post-retirement appointments is particularly significant. The pattern of senior judges, after retirement from the Supreme Court or High Courts, being appointed to tribunals, commissions, and other quasi-judicial bodies by the central or state governments has been extensively documented and criticized. The constitutional concern is not with any individual appointment but with the structural dynamic: if sitting judges know that their retirement prospects include valuable appointments that are at the discretion of the government, they may be influenced, consciously or unconsciously, to decide cases in ways that do not damage their prospects of post-retirement preferment. This is the phenomenon of what Larry Lessig has called institutional corruption: a form of systemic dependence that distorts institutional behavior without requiring any individual act of dishonesty.

2.4 Beyond the NJAC Debate: A New Model for Judicial Appointments

The National Judicial Appointments Commission (NJAC), established by the 99th Constitutional Amendment and the NJAC Act of 2014, was struck down by the Supreme Court in Supreme Court Advocates-on-Record Association v. Union of India (2015) by a majority of four to one. The majority held that the NJAC compromised judicial independence by giving the executive (through the Law Minister) and civil society members (nominated by a committee including the Prime Minister) a role in judicial appointments that could allow political considerations to influence the selection of judges.

The majority judgment has been extensively criticized by constitutional scholars including Upendra Baxi, Fali Nariman, and others who argued that the Court was protecting its own institutional interests rather than applying a neutral principle of constitutional law. The striking

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down of the NJAC created a paradox that has never been satisfactorily resolved: the collegium system is unconstitutional in the sense that it has no basis in the constitutional text (Article 124 provides for presidential appointment in consultation with the Chief Justice, not for a collegium system), but the NJAC that the Constitution was amended to establish was found to violate the basic structure. The result is a constitutional arrangement that is constitutionally unauthorized but practically entrenched.

The independence of the judiciary is a cornerstone of constitutional democracies, yet the process by which judges are appointed must also reflect transparency, accountability, and inclusiveness. In India, the Collegium system evolved through judicial interpretation has faced persistent criticism for its opaque functioning and lack of institutional checks. Rather than rejecting outside participation altogether, as was the case in the NJAC judgment, India should explore hybrid models that reinforce constitutional principles while ensuring greater openness and public trust. Reform does not mean undermining the judiciary, but rather strengthening it through transparency, diversity, and democratic legitimacy. RSIS International

The proposal that best reconciles the competing demands of judicial independence and democratic legitimacy is a Judicial Appointments Commission of the following design. The commission should have a majority of judicial members (the Chief Justice of India and two senior Supreme Court judges appointed by the Chief Justice) to ensure that the judiciary retains primary authority over appointments. It should also include an independent eminent persons panel of three persons of demonstrated integrity and professional distinction, appointed by a committee consisting of the Chief Justice, the President of the Bar Council of India, and the Chairperson of the National Human Rights Commission, none of whom is the nominee of the central government. It should include a parliamentary member appointed jointly by the leaders of the majority and the largest opposition party in the Rajya Sabha, ensuring that the legislative perspective is represented without giving the executive control. And it should have a professional secretariat that maintains records, develops selection criteria, and ensures that the process is transparent, with published appointment records including the reasons for appointments and, where candidates are rejected, the reasons for rejection.

The critical feature of this design is the exclusion of direct executive representation. The government of the day should not have a seat at the table in judicial appointments. The government's legitimate interest in ensuring that judicial appointments do not reflect excessively narrow social, regional, or ideological perspectives should be addressed through the parliamentary representative on the commission, who can represent a bipartisan legislative view, and through the published records of the process that allow parliamentary scrutiny of appointment decisions.

This design is consistent with comparative international models. The United Kingdom's Judicial Appointments Commission, established in 2005, similarly excludes direct executive membership while including lay members and parliamentary oversight. The Canadian judicial appointments process includes a commissioner for federal judicial affairs who is independent of the Department of Justice. The German Federal Constitutional Court judges are elected by the Bundestag and Bundesrat by two-thirds majorities, ensuring that appointments require broad political consensus rather than reflecting the preferences of a single governing party.

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2.5 Judicial Accountability Mechanisms: The Necessary Complement to Independent Appointments

The reform of judicial appointments addresses only one side of the judicial independence problem. The other side is judicial accountability: the mechanisms for addressing misconduct, incompetence, and corruption by sitting judges without compromising judicial independence.

The current constitutional provision for removal of judges, contained in Articles 124(4) and 217(1)(b), requires an address by both houses of Parliament, each by a special majority, followed by presidential action. This process, which has been used only twice (in 1993 in the case of Justice V. Ramaswami and in 2011 in the case of Justice Soumitra Sen, neither of whom was actually removed because the motions did not complete the full process), is so cumbersome and so politically charged that it functions effectively as no accountability mechanism at all for ordinary misconduct.

The supplementary "in-house procedure" developed by the Supreme Court, under which the Chief Justice can inquire into complaints against judges, is informal, based on no statutory or constitutional authority, and has no reliable outcomes. The 2025 Justice Varma controversy demonstrated both the capacity and the limitations of this procedure: the Chief Justice acted relatively quickly to remove the judge from judicial duties and to initiate an inquiry, but the inquiry process itself operates without statutory rules, without defined evidentiary standards, and without guaranteed procedural fairness for the judge under investigation.

The constitutional reform required is the establishment by legislation, enacted pursuant to a constitutional authorization, of an independent Judicial Conduct Commission. This commission should be separate from the Judicial Appointments Commission to avoid conflicts of interest. It should include senior retired judges of demonstrated integrity, eminent legal professionals, and lay members with professional expertise in investigations. It should have statutory authority to receive and investigate complaints against sitting judges at all levels of the court system, to conduct formal inquiries with defined procedural rules, to make recommendations for sanctions ranging from censure to removal, and to publish its decisions with reasons. It should be funded directly from the consolidated fund of India rather than through government annual appropriations, to insulate it from budgetary pressure.

The constitutional amendment required to establish this commission should simultaneously revise Article 124(4) to replace the current parliamentary address mechanism with a process in which the Judicial Conduct Commission's recommendation for removal is confirmed by a parliamentary vote, rather than the current system in which Parliament initiates and drives the removal process. This change would make the commission the primary accountability mechanism, with Parliament serving as the confirming authority rather than the investigating authority, a more constitutionally appropriate division of functions.

2.6 The Separate Constitutional Court Proposal: Case For and Against

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The proposal for a separate Constitutional Court, separate from the Supreme Court, has been advanced by several constitutional scholars and was addressed in broad terms in Part Three. Here it is necessary to examine the case in more detail.

The argument for a separate Constitutional Court rests on several grounds. The Supreme Court of India, with its combination of original constitutional jurisdiction, appellate jurisdiction in criminal and civil matters, and supervisory jurisdiction over all courts and tribunals, carries an impossible case load. With approximately sixty thousand cases pending at any given time, the Court cannot give the sustained, deliberate, theoretically rigorous attention to constitutional questions that a genuine constitutional court requires. The result is that constitutional cases are often decided with inadequate attention to the broader constitutional implications of specific rulings, that constitutional doctrine develops inconsistently as different benches of the Court take divergent approaches to similar constitutional questions, and that the Court's enormous docket of ordinary appellate cases crowds out the constitutional cases that should receive priority attention.

The German Federal Constitutional Court, established in 1951, provides the model most frequently cited in this debate. The German court has exclusive jurisdiction over constitutional questions, including challenges to the constitutional validity of legislation, disputes between constitutional organs, and complaints by individuals about violations of their basic rights. Its twelve judges are elected by the Bundestag and Bundesrat for non-renewable twelve-year terms, preventing both executive influence over appointments and the gradual institutional conservatism that life tenure (or lengthy tenure) can produce. Its decisions are published with detailed reasoning and with dissenting opinions, making its constitutional jurisprudence transparent and accountable to the academic and public critique that constitutional courts in a democracy must be able to withstand.

The counter-argument is that the creation of a separate constitutional court would require a fundamental reorganization of the existing court system, including the resolution of difficult questions about how constitutional questions would be transferred from ordinary litigation to the constitutional court, how the constitutional court would interact with the Supreme Court in matters of general law that also have constitutional dimensions, and how the existing Supreme Court would be reconstituted or wound down. These are genuine institutional challenges, but they are not insuperable, and the experience of countries that have established separate constitutional courts after the transition from one constitutional system to another, including South Africa, Poland, and Hungary, demonstrates that the transition can be managed.

The middle ground between the status quo and a completely separate constitutional court is the creation, within the Supreme Court, of a dedicated constitutional bench with a specialized function, exclusively selected membership, and a dedicated caseload management system that ensures constitutional matters receive priority attention. This approach, which preserves the institutional continuity of the Supreme Court while addressing the substantive problem of constitutional under-attention, may be more practically achievable in the Indian context than a full institutional separation.

2.7 Judicial Access and the Constitutional Right to Justice

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The access to justice crisis, in which the majority of Indian citizens are effectively excluded from the constitutional protection that the judicial system formally provides, is perhaps the most fundamental dimension of the judicial reform agenda from the perspective of the constitutional rights of ordinary people.

India's ranking in the Rule of Law Index 2023, published by the World Justice Project, reflects judicial delays, with the country placed at 111 out of 142 countries in civil justice and 93 in criminal justice. The average duration for a case to conclude in Indian courts ranges between 3-5 years, with some cases extending for decades. Drishti IAS This delay not only denies litigants timely justice but systematically advantages those with the resources to sustain prolonged litigation over those who cannot afford to wait for justice.

The constitutional reform of access to justice requires a comprehensive approach that addresses the supply side (the number of courts and judges), the demand side (the mechanisms for reducing unnecessary litigation and managing the caseload that does reach the courts), and the access side (the mechanisms for ensuring that economic disadvantage does not determine access to constitutional protection).

On the supply side, the constitutional framework should be amended to establish a mandatory judicial appointments process that must maintain the number of judges at a constitutionally specified ratio per million population, with a mechanism for automatic creation of new judicial positions when this ratio falls below the minimum. The current system of judicial appointments, which depends on the collegium making recommendations and the executive processing them, has produced persistent and severe vacancies at all levels of the court system that constitute a structural denial of the right to justice.

On the access side, the constitutional amendment of Article 39A to make the right to free legal services a justiciable fundamental right rather than a non-justiciable directive principle is the essential first step. But the right to legal services must be accompanied by the institutional resources to make it genuine. The National Legal Services Authority and the State Legal Services Authorities that implement the legal aid scheme are chronically underfunded, operating with a fraction of the resources that would be necessary to provide meaningful legal representation to the hundred of millions of citizens who qualify for and need legal aid.

The comparative model here is the public defender system of the United States, which, despite its many well-documented inadequacies, provides a constitutional baseline of representation in criminal matters that India has not yet achieved. A more ambitious model is the legal aid system of the United Kingdom, which at its peak provided comprehensive legal representation in both civil and criminal matters to persons of limited means. The retreat from this system under austerity politics in the UK has been widely criticized as a denial of access to justice; the lesson for India is not to imitate the UK's retreat but to build toward the access that the UK's pre-austerity system provided.

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CHAPTER THREE: THE ANTI-CORRUPTION CONSTITUTIONAL ARCHITECTURE - FROM INSTITUTIONAL CAPTURE TO GENUINE INDEPENDENCE

3.1 The Theoretical Framework of Institutional Independence for Anti-Corruption

The constitutional theory of anti-corruption institutions draws on the concept of what Philip Pettit has called "republican freedom": freedom as non-domination, freedom from the arbitrary exercise of power by others over one's life. On this understanding, corruption is not merely a violation of legal norms but a denial of republican freedom: the person who must pay a bribe to access a public service to which she is entitled is dominated by the official who demands the bribe, and the constitutional order that enables this domination has failed in one of its primary functions.

The institutional design of anti-corruption bodies must address what has been identified in the academic literature on institutional design as the "independence-accountability trade-off": the fact that the same independence from political control that enables an anti-corruption body to pursue politically powerful targets also creates the risk that the body will pursue its own institutional agenda rather than serving the public interest. The resolution of this trade-off requires careful institutional design rather than simply maximizing independence or maximizing accountability.

The most sophisticated comparative analysis of this trade-off is found in the literature on independent regulatory agencies and prosecutorial bodies. The comparative institutional analysis of the Hong Kong Independent Commission Against Corruption (ICAC), established in 1974 and widely regarded as one of the most effective anti-corruption institutions in the world, the Australian National Anti-Corruption Commission (NACC), established in 2023, and the South African Directorate for Priority Crime Investigation (the Hawks), established in 2009 as a successor to the Scorpions that had been dismantled by political pressure, provides a rich comparative resource for Indian institutional design.

The common features of effective anti-corruption institutions identified in this comparative literature include: financial independence from the government's annual appropriations process, secure tenure for leadership with removal only for specified grounds of personal misconduct through an independent process, jurisdiction over all public officials including those at the highest level of the executive, prosecutorial independence from the attorney general or other government legal officers, and a transparent accountability framework that subjects the institution itself to public reporting and parliamentary oversight without compromising operational independence in specific investigations.

3.2 The Lokpal and the Failure of the Statutory Anti-Corruption Architecture

The Lokpal and Lokayuktas Act of 2013, enacted after years of civil society pressure culminating in the Anna Hazare movement of 2011, established the office of the Lokpal at the central level and required states to establish Lokayuktas. The Lokpal is constituted as a multi-member collegium-style body including judicial and non-judicial members, with jurisdiction to

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inquire into complaints of corruption against current and former Prime Ministers (with certain exceptions), ministers, members of Parliament, group A officers of the central government, and the leadership of central public sector enterprises and autonomous bodies.

In practice, the Lokpal has been chronically ineffective. Its first chairperson was not appointed until 2019, six years after the Act was passed. As of 2025, its functioning has been limited and its impact on the anti-corruption landscape has been marginal. The reasons for this ineffectiveness are structural rather than merely personnel-based: the Lokpal lacks prosecutorial independence, having to rely on the Central Bureau of Investigation and other central government agencies for investigation and on the government prosecution machinery for trial. The selection of the Lokpal's members, while involving the Chief Justice and the Leader of the Opposition, remains subject to central government influence through the Prime Minister's membership of the selection committee. The funding of the Lokpal is through the annual budgetary process, making it vulnerable to resource starvation. And the coverage of the Lokpal excludes significant categories of public officials, including members of the armed forces and intelligence agencies.

The constitutional reform required is the elevation of the anti-corruption function to a constitutional institution, with the same constitutional status as the Election Commission, the Comptroller and Auditor General, and the Supreme Court. This means constitutional provisions establishing the office, its independence, its jurisdiction, and its accountability, rather than mere statutory provision that can be amended or undermined by a simple parliamentary majority. It means funding from the Consolidated Fund of India rather than from annual appropriations. It means appointment through a genuinely independent process. And it means prosecutorial independence, including the authority to prosecute cases directly before the designated courts without depending on government prosecutors.

3.3 The CBI and the Constitutional Problem of Prosecutorial Dependence

The Central Bureau of Investigation (CBI) is the primary federal investigative agency for serious corruption cases, fraud, and national security offenses. As established in Part Three, the Supreme Court's characterization of the CBI as a "caged parrot" that speaks for its political master captures the structural problem. The CBI's investigation and prosecution of cases is subject to multiple forms of executive influence: through the appointment and removal of its director, through control of its operational budget, through the sanction requirements that require executive permission before investigating and prosecuting public servants, and through the informal channels of communication between senior CBI officers and the political executive that shape the agency's investigative priorities.

The constitutional reform of the CBI requires, at minimum, its reconstitution as a constitutionally independent body modeled on the design principles outlined for the anti-corruption commission in the previous section. But the deeper reform question is whether the CBI, as currently constituted and historically compromised, can be reformed, or whether India needs a new investigative institution built on genuinely independent foundations.

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The history of the CBI is instructive here. The agency was created in 1941 as the Special Police Establishment under the British colonial administration, with jurisdiction over corruption in the war procurement apparatus. It was reconstituted under the Delhi Special Police Establishment Act of 1946 and has operated under that colonial statute, with modifications, ever since. Its institutional culture, its operating procedures, its relationships with the political executive, and its structural dependence on central government resources are the accumulated products of seven decades of operation within a framework of structural dependence. The possibility of genuine reform of an institution so thoroughly conditioned by these structural factors is questionable.

The comparative analogy of the Central Intelligence Agency (CIA) in the United States, which has been reformed many times but whose institutional culture of deference to executive authority has proved remarkably persistent despite structural reforms, suggests caution about the capacity of institutional reform to overcome deeply embedded organizational cultures. If India is serious about creating an independent investigative and prosecutorial apparatus for corruption cases, it may need to build that apparatus fresh rather than attempting to reform the CBI from within.

3.4 The Electoral Finance Reform and the Constitutional Anti-Corruption Compact

The striking down of the electoral bonds scheme by the Supreme Court in Association for Democratic Reforms v. Union of India (February 2024) removed one of the most structurally corrupting elements of the Indian political finance system. But the underlying constitutional problem that the electoral bonds scheme exploited, the absence of a constitutional framework for transparent and corruption-resistant political finance, has not been resolved.

The data that emerged after the Supreme Court's order, showing the correlation between corporate donations through electoral bonds and government regulatory decisions favorable to the donating corporations, illustrated the mechanism of institutional corruption that Lessig's theoretical framework describes. Corporations under investigation by government agencies that are under the central executive's control were simultaneously making large donations to the ruling party through the electoral bond mechanism. Whether or not any individual politician engaged in explicit quid pro quo corruption, the structural dynamic created by this relationship is one of systematic institutional corruption: regulated industries funding the regulators, creating a structural dependence that compromises the regulator's independence even without any specific act of individual dishonesty.

The constitutional reform of political finance requires a new Article 324A (added by constitutional amendment) establishing the constitutional framework for political party finance. This article should require full transparency in political donations above a specified threshold, including the identity of donors, the amounts donated, and the political parties to which donations are made. It should prohibit donations to political parties from companies that are under investigation by government agencies, that hold government contracts, or that are subject to government licensing or regulatory approvals, on the ground that such donations create structural conflicts of interest incompatible with the constitutional requirement of good governance. It should establish a system of public funding for political parties, at a level sufficient to reduce their dependence on large private donations, with allocation of public funds based on electoral performance. And it should establish an independent Commission on Political

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Finance with constitutional status, to enforce these provisions with genuine investigative and sanctioning powers.

3.5 The Conflict of Interest Framework: What India's Constitution Does Not Say

One of the most glaring constitutional silences in the Indian constitutional order is the absence of any provision addressing conflicts of interest in public life. The Constitution requires that the Prime Minister and Ministers be members of Parliament (Article 75(5)), that they take an oath of office (Article 75(3)), and that they are collectively responsible to the Lok Sabha (Article 75(3)). But it contains no provision requiring them to divest personal financial interests that create conflicts with their governmental responsibilities, no provision requiring financial disclosure that would allow Parliament and the public to identify such conflicts, and no provision prohibiting the appointment of family members or business associates to positions in which they would benefit from the minister's official decisions.

This constitutional silence has enabled a form of conflict-of-interest driven corruption that is structural rather than individual: the system in which ministers retain personal financial interests in industries they regulate, in which government contracts are awarded to companies associated with political leaders' families, in which regulatory decisions are shaped by the financial interests of those in power. The absence of conflict of interest rules is not merely an administrative failure. It is a constitutional failure, because the right of citizens to governance that serves their interests rather than the interests of those in power is a dimension of the constitutional right to equality and the constitutional principle of public accountability.

The constitutional reform required is a new Article on public integrity, requiring the President, Vice President, Prime Minister, Ministers, members of Parliament, state governors, chief ministers, state ministers, members of state legislatures, and senior civil servants to make full and public financial declarations on assumption of office and annually thereafter, to divest direct financial interests in matters subject to their official authority, and to recuse themselves from any official decision in which they or their immediate family have a direct financial interest. The enforcement of this article should be assigned to the independent anti-corruption commission, with power to order divestment, to recommend criminal prosecution for willful non-disclosure, and to publish compliance records.

CHAPTER FOUR: THE ELECTORAL REFORM IMPERATIVE - BUILDING GENUINE DEMOCRATIC REPRESENTATION

4.1 The First-Past-the-Post Problem: Constitutional Arithmetic Against Democratic Legitimacy

The first-past-the-post (FPTP) electoral system, as noted in earlier parts of this textbook, has been producing results in Indian elections that are increasingly difficult to reconcile with any credible theory of democratic representation. In the 2024 general election, the BJP-NDA coalition won a working parliamentary majority while receiving approximately 43 percent of the

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total votes cast. This means that more than 57 percent of the votes cast were for parties and coalitions that form the opposition, yet those votes translated into a substantial minority in Parliament.

The problem is not merely quantitative, though the quantitative dimension is serious. The deeper problem is qualitative: the FPTP system creates systematic incentives for political parties to maximize support in geographically concentrated constituencies rather than to build broad national coalitions. It creates "safe seats" in which incumbents can never lose regardless of their performance, because their party has a structural majority in the constituency. It creates "wasted votes" in constituencies where the losing party's votes contribute nothing to representation. And it creates opportunities for parties with concentrated geographic support to win parliamentary representation entirely disproportionate to their national popular support, while parties with diffuse support may win millions of votes and very few seats.

The constitutional case for electoral reform is grounded in the right to equal treatment under Article 14 and the guarantee of free and fair elections under the basic structure doctrine. A system in which a vote cast for a winning candidate in a safe constituency has a much higher effective value (in terms of translating into parliamentary representation) than a vote cast in a competitive constituency or for a losing candidate is not a system of equal voting. The principle of "one person, one vote, one value" requires not merely that each person has the right to vote but that each vote has equal weight in determining the composition of the representative assembly.

Comparative constitutional analysis demonstrates that many democracies have addressed this problem through proportional representation or mixed electoral systems. Germany uses a mixed-member proportional system in which half the members of the Bundestag are elected from constituencies and the other half from party lists, with the overall composition of the Bundestag proportionate to the share of votes received by each party. New Zealand adopted a similar mixed-member proportional system in 1996 after a referendum revealed widespread dissatisfaction with the FPTP system that had previously been used. South Africa uses a closed-list proportional representation system for both national and provincial elections. These systems are not without their own problems, but they all address the fundamental problem of vote-seat disproportionality more effectively than FPTP.

The constitutional reform of the electoral system in India would require amendment of Articles 81, 83, 170, 171, and the Representation of the People Act. It should move to a mixed-member proportional system similar to Germany's, in which approximately 50 percent of seats in the Lok Sabha and state assemblies are filled from single-member constituencies (preserving the constituency connection that is valued in the Indian parliamentary tradition) and the remaining 50 percent from state party lists, with the overall seat allocation adjusted to make the total composition of the house proportionate to the popular vote. This system would preserve the local accountability of constituency-based representatives while ensuring that the overall composition of Parliament reflects the distribution of political preferences in the electorate.

4.2 One Nation One Election: The Constitutional and Democratic Problems of Simultaneous Elections

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The proposal for simultaneous elections to the Lok Sabha and all state assemblies, colloquially known as One Nation One Election (ONOE), has been presented by the BJP government as an administrative and economic efficiency measure. The Ram Nath Kovind High Level Committee report, released in 2024, provided a detailed examination of the proposal and recommended its implementation through a series of constitutional amendments.

The ONOE proposal deserves careful constitutional analysis because its implications go far beyond the administrative convenience that its proponents emphasize. The proposal would require that all state assembly elections be synchronized with the Lok Sabha election, either by curtailing or extending the terms of existing state assemblies to align them with a common election cycle. This would require amendment of Articles 83, 85, 172, and 174 of the Constitution, which govern the terms and dissolution of Parliament and state assemblies.

The constitutional problem with ONOE begins with its implications for federalism. State governments in India are constitutionally elected bodies with their own democratic mandates, independent of the national mandate of the central government. A state assembly elected for a five-year term has a democratic mandate from the voters of that state that is constitutionally independent of the Prime Minister's mandate from the national electorate. The ONOE proposal, by synchronizing state and national elections, treats the state electoral mandate as subordinate to the national electoral cycle in a way that is constitutionally inconsistent with genuine federalism.

The second problem is the impact on democratic accountability. The purpose of regular elections, including the mid-term elections that occur when state assemblies are dissolved before their full term is served, is to provide opportunities for the electorate to hold governments accountable for their performance. The ONOE proposal, by fixing all elections to a five-year synchronized cycle, would eliminate mid-term accountability mechanisms. A state government that lost public confidence after a major policy failure would have no constitutional mechanism through which the electorate could express that loss of confidence until the five-year cycle came to its end.

The third problem is the impact on electoral behavior. The simultaneous conduct of national and state elections creates strong incentives for national-level political narratives to dominate the electoral discourse, disadvantaging state-specific political movements and regional parties that draw their support from distinctively local concerns. This is not a theoretical concern. In countries that have adopted synchronized election cycles, the research literature consistently shows that national elections held simultaneously with subnational elections produce different voting outcomes than elections held at different times, with voters more likely to "split" their votes in favor of national parties in simultaneous elections than when voting in standalone state elections.

The constitutional reform argument against ONOE is not merely technical. It is substantive: the periodic renewal of democratic mandates through elections at different levels of government at different times is a feature of genuine federalism, not an inefficiency to be eliminated. The elimination of this feature in the name of administrative convenience represents a centralizing constitutional change that is in tension with the basic structure principle of federalism.

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4.3 The Electoral Commission: Strengthening the Constitutional Watchdog

The Election Commission of India (ECI) is one of the most constitutionally important institutions in the Indian democratic order. Established under Article 324 of the Constitution as an independent constitutional body, the ECI has a substantial record of managing complex elections in a geographically vast and diverse country with significant logistical challenges. Its enforcement of the Model Code of Conduct during election periods, its management of electronic voting machines, and its generally credible conduct of the electoral process have been essential to the basic functioning of Indian democracy.

But the ECI's ability to address the most serious contemporary threats to the integrity of the electoral process has been systematically limited by gaps in its constitutional mandate, its institutional resources, and its independence from the political executive. The Supreme Court's intervention in 2023, directing that the appointment of Election Commissioners should no longer be at the discretion of the government, but through a committee including the Chief Justice of India, represented an important judicial correction of the constitutional framework. But the subsequent legislation enacted by the government effectively reversed the Supreme Court's direction by replacing the Chief Justice's role in the selection committee with a cabinet minister, restoring executive dominance over the appointment process.

The constitutional reform required is the amendment of Article 324 to establish a fully transparent and independent appointment process for the Chief Election Commissioner and Election Commissioners, with the criteria for appointment, the composition of the selection committee, and the process for removal all specified in the constitutional text rather than left to legislation. The appointment process should exclude direct executive representation in the selection committee, replacing it with a parliamentary-legislative selection process (along the lines of the German model for constitutional court judges) that requires cross-party consensus.

Additionally, the ECI's mandate should be expanded to include genuine jurisdiction over political party finance, social media campaigning, and the use of state resources for electoral purposes. The current ECI has limited ability to address these increasingly important dimensions of electoral integrity. A new Article 324A establishing an independent framework for electoral finance and campaign regulation, with enforcement authority vested in the ECI, would address some of the most serious contemporary threats to electoral integrity.

4.4 The Anti-Defection Law: Reconstitution on Democratic Foundations

The Tenth Schedule of the Constitution, the anti-defection law, was added by the 52nd Constitutional Amendment in 1985 to address the phenomenon of "aaya ram gaya ram" politics, in which elected legislators switched parties wholesale in exchange for political patronage, destroying the stability of democratically formed governments.

The constitutional legitimacy of the anti-defection law rests on the argument that elected legislators owe a degree of political loyalty to the parties on whose platform they were elected, and that mass defections from political parties for the purpose of installing a different government from the one the electorate chose represent a subversion of the democratic mandate.

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This argument has constitutional merit, but it has been used to justify a scope of application that far exceeds what democratic theory requires. The prohibition on defection has been interpreted to require party-line voting not merely on matters of governmental confidence but on virtually every legislative matter. This interpretation transforms legislators from representatives exercising independent judgment into voting machines executing party instructions.

The constitutional reform required is a clarifying amendment to the Tenth Schedule specifying that disqualification for defection applies only to: votes on motions of confidence or no-confidence in the government; votes on money bills; and votes on the removal of constitutional office holders. On all other legislative matters, members are free to vote according to their conscience and judgment without fear of disqualification. This reform would preserve the anti-defection law's core purpose of preventing the artificial destabilization of democratically formed governments while restoring the deliberative character of legislative assemblies.

CHAPTER FIVE: REDESIGNING FEDERALISM - THE BLUEPRINT FOR A GENUINE UNION OF STATES

5.1 The Theoretical Foundations of Genuine Indian Federalism

The theory of federalism in constitutional law has evolved significantly since the foundational work of K.C. Wheare, whose "Federal Government" (1946) defined federalism as a system in which the general and regional governments are each within a sphere coordinate and independent. Wheare's definition, developed in the context of classical Anglo-American federalism, has been refined and expanded by later scholars including William Riker, Daniel Elazar, and more recently Donald Horowitz and Ronald Watts.

The central insight of contemporary federalism theory is that federalism is not merely a constitutional-legal arrangement for the distribution of powers between levels of government, but a political mechanism for managing diversity in plural societies. In this understanding, federalism serves multiple constitutional functions simultaneously: it prevents the concentration of power at any single level of government, it preserves the political representation of diverse territorial and social communities, it creates laboratories for policy innovation as different jurisdictions experiment with different approaches to common problems, and it enables the adaptation of public policy to local conditions and preferences.

India's constitutional framework satisfies the formal criteria of federalism (two levels of government with defined powers) but fails the substantive criteria of genuine federalism (coordination and independence within each government's sphere). The reasons for this failure have been documented extensively in the preceding chapters. The constitutional reform agenda for federalism must address both the formal constitutional provisions and the informal institutional practices that have produced this failure.

5.2 Reforming the Seventh Schedule: Redistributing Powers for the Twenty-First Century

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The Seventh Schedule of the Constitution, which distributes legislative powers between the Union and the states through the Union List, State List, and Concurrent List, was designed for the governance challenges of 1950. Seventy-five years of social, economic, and technological change have rendered many of its specific allocations obsolete while the structural imbalance in favor of the Union that it establishes has been progressively exploited to further centralize power.

The constitutional reform of the Seventh Schedule should begin with a comprehensive review of the allocation of specific subjects. Several subjects that are currently on the Union List should be transferred to the State List or the Concurrent List on the ground that their effective governance requires local knowledge, democratic accountability at the state level, and adaptation to diverse state conditions. Education, which was moved to the Concurrent List by the 42nd Amendment in 1976, should remain there but with a constitutional guarantee that state governments have the primary authority over matters of curriculum, language of instruction, and school management, with Union authority limited to matters of inter-state significance such as national standards for degrees and certifications that travel across state boundaries.

Health, currently distributed between the Union and State Lists in a fragmented way, should be unified in the State List as the primary location of health authority, with Union authority limited to matters of national and international public health significance. The COVID-19 pandemic demonstrated that the fragmentation of health authority between Union and state governments, combined with the absence of clear constitutional frameworks for public health federalism, created serious governance failures. A reformed constitutional framework should clearly assign primary health governance authority to the states while creating a constitutional framework for Union-state cooperation in national public health emergencies.

Agriculture, currently in the State List, has been the subject of contentious central intervention through the three farm laws enacted in 2020 and subsequently repealed in 2021 following massive farmer protests. The constitutional framework should clarify and strengthen the states' primary authority over agricultural regulation, marketing, and support systems, while preserving Union authority over inter-state agricultural trade and food security matters.

The Union List should be reduced to matters that are genuinely national in character and that cannot be effectively governed at the state level: defense, foreign affairs, nuclear energy, inter-state rivers, inter-state communication and transport, banking and finance of national significance, and the regulation of matters affecting the internal market in terms of preventing inter-state trade barriers.

5.3 Fiscal Federalism: The Constitutional Framework for Financial Independence

The reform of fiscal federalism is the most technically complex dimension of the federalism reform agenda, but it is also among the most important, because genuine state autonomy in discharging constitutional functions requires genuine financial capacity to discharge those functions.

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The current fiscal federal framework has three main components: the system of sharing central taxes between the Union and the states (through the Finance Commission), the system of grants-in-aid from the Union to the states under Article 275, and the system of centrally sponsored schemes through which the Union funds programs implemented by state governments on conditions specified by the Union. These three components together produce a fiscal relationship in which state governments are financially dependent on the Union for a substantial portion of their operating revenues, with that dependence tied to conditions that constrain state policy choices.

The constitutional reform of fiscal federalism should proceed on three principles. The first principle is that state governments should have adequate own-revenue capacity to fund their primary constitutional functions without dependence on Union transfers. This requires either the constitutional assignment of additional tax-generating capacity to the states or the constitutionalization of a revenue-sharing formula that guarantees states a minimum share of national tax revenues adequate to fund their constitutional responsibilities.

The second principle is that the Finance Commission, which recommends the allocation of central taxes between the Union and the states, should be constitutionally protected from the pressure of political bargaining between the Union and the states by making its recommendations binding rather than advisory. The current position, in which the Finance Commission's recommendations are technically advisory and the Union government can accept or reject them (though in practice it has generally accepted them), creates a structural vulnerability to political manipulation of the fiscal federal framework. A constitutional amendment making Finance Commission recommendations on tax sharing binding, subject only to constitutional court review, would remove this vulnerability.

The third principle is the constitutionalization of the cooperative federalism principle, in the form of a constitutional requirement of inter-governmental consultation before the Union government enacts legislation on matters in the Concurrent List, before it launches centrally sponsored schemes that affect state fiscal capacity, and before it takes major budgetary decisions that significantly affect state revenues or expenditure obligations. The constitutional framework for the Inter-State Council, established under Article 263, provides a vehicle for this consultation but has been underused and inadequately supported. A constitutional amendment strengthening the Inter-State Council and requiring its consultation on specified categories of Union decisions affecting states would begin to build the institutional infrastructure for genuine cooperative federalism.

5.4 The Abolition of Governor as Political Instrument

The case for the fundamental reform or abolition of the Governor's office has been argued in detail in Part Three. Here it is necessary to specify the precise constitutional reform required.

The most defensible reform, which preserves the institutional function of a state constitutional head while eliminating the most acute constitutional problems, is the conversion of the Governor's office into an elected position, with the Governor elected by the members of the state legislature for a fixed five-year term that is not removable during its term by the central

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government except for specified grounds of personal misconduct through an independent judicial process.

An elected Governor, chosen by the legislature that she or he will interact with, would have a democratic mandate from the state rather than a political appointment from the Centre. She or he could not be removed for exercising constitutional discretions in ways that the central government found inconvenient. The discretionary powers that have been most systematically misused (the power to invite parties to form the government in hung assembly situations, the power to delay assent to state legislation, the power to submit reports under Article 356) would be exercised by a person who is accountable to the state's democratic institutions rather than to the central government.

The counterargument that an elected Governor would be a political partisan of the state ruling party, and therefore an inadequate check on state government excesses, has some force but is insufficient to defeat the case for reform. The current system of an appointed Governor is not a neutral check on state government: it is a check that operates in favor of the central government regardless of whether it is the state government or the central government that is overreaching constitutionally. The reform should include constitutional provisions requiring the Governor to exercise specified discretions through defined procedural mechanisms (for example, requiring the Governor in a hung assembly situation to invite the leader of the largest single party first, rather than exercising unconstrained discretion) that reduce the scope for partisan manipulation regardless of who holds the office.

The alternative of retaining an appointed Governor but providing for parliamentary confirmation of the appointment, on the model of the United States Senate's role in confirming presidential appointments, would ensure that some degree of cross-partisan scrutiny is applied to gubernatorial appointments. The drawback is that parliamentary confirmation in a system where the ruling party controls the Rajya Sabha can become a rubber stamp. But it would at least create a formal mechanism for parliamentary accountability that the current system entirely lacks.

5.5 The Second Chamber and the Federal Representation Problem

The Rajya Sabha, the upper house of Parliament, is designated the "Council of States" but does not in fact represent states as units in the federal system. Its members are elected by state legislative assemblies through proportional representation by single transferable vote, meaning that the composition of the Rajya Sabha reflects the proportion of state assembly seats held by different parties rather than the interests of states as governmental entities.

This design, borrowed from the British House of Lords as transformed by the Government of India Act, lacks the structural federal function that upper houses in genuinely federal systems serve. In the United States, the Senate provides equal representation for all states regardless of population, ensuring that small states have the same senatorial weight as large ones. In Germany, the Bundesrat represents state governments directly, with members of the Bundesrat being members of state governments rather than independently elected senators. In both cases, the upper house serves as a genuine institutional mechanism for the representation of state interests in the national legislative process.

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The constitutional reform of the Rajya Sabha to give it a genuine federal function would require a significant departure from the current design. The most appropriate reform for India, given its diversity and the importance of preserving some degree of proportionality in the composition of Parliament, would be a mixed model in which states are represented in the Rajya Sabha through a combination of a small fixed number of seats per state (ensuring that even small states have minimum representation) and a proportional allocation based on population. State government nominees rather than directly elected senators would fill the fixed-seat allocation, ensuring that state governments as institutional actors have representation in the national legislative process. The proportional seats would continue to be filled through election by state assemblies.

This reform would give state governments a formal constitutional presence in the national legislative process that they currently lack, creating a structural mechanism for the representation of state interests in Union legislation that could partially substitute for the inter-governmental consultation mechanisms discussed in the fiscal federalism section.

CHAPTER SIX: THE SOCIAL RIGHTS REVOLUTION - MAKING FUNDAMENTAL RIGHTS SUBSTANTIVE FOR ALL

6.1 The Case for Justiciable Social and Economic Rights

The argument for making social and economic rights justiciable in a reformed Indian constitution is not merely a matter of doctrinal preference. It is grounded in the fundamental constitutional values of the Indian constitutional order: equality, dignity, liberty, and fraternity as proclaimed in the Preamble.

The philosophical case for justiciable social rights has been developed most powerfully by Amartya Sen in "The Idea of Justice" and in his earlier work on capabilities, and by Martha Nussbaum in "Creating Capabilities." Sen's capabilities approach holds that justice requires not merely that people have formal rights but that they have the actual ability to exercise those rights, and that this actual ability depends on having access to the material conditions that make the exercise of rights possible. A constitutional order genuinely committed to justice must, on this approach, guarantee not merely the formal right but the real capability.

The standard objections to justiciable social rights are well-known and deserve engagement. The first objection, that courts cannot manage the allocation of state resources, has been challenged by the experience of countries that have enacted justiciable social rights. The South African Constitutional Court, in Grootboom and Minister of Health v. Treatment Action Campaign, has developed a jurisprudence of social rights enforcement that does not require courts to micromanage government budgets but does require governments to demonstrate that their policies are "reasonably designed" to progressively realize the social rights in question. This "reasonableness review" standard manages the institutional competence objection by leaving policy design to the executive and legislature while requiring that the policies they design are constitutionally adequate.

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The second objection, that social rights are inherently aspirational rather than legally enforceable because their content is indeterminate, is also challengeable. The experience of India's own expanded Article 21 jurisprudence demonstrates that courts can give content to broadly stated rights through a process of constitutional development that is both principled and responsive to the social context. The right to health, the right to food, the right to education, and the right to housing have been given specific content in specific cases through a process of judicial development that is no less principled than the development of civil and political rights jurisprudence.

The third objection, the democratic legitimacy objection, holds that the content of social rights should be determined by elected representatives rather than by unelected judges. This objection is strongest when the question is what specific policy should be adopted to realize a social right, and weakest when the question is whether the government has adopted any policy at all and whether that policy satisfies a minimum constitutional standard. A reformed constitutional framework for social rights should respond to this objection by adopting a graduated standard of review: strict scrutiny for policies that fall below a constitutional minimum floor, intermediate scrutiny for policies that address the social right but may not optimize its realization, and deferential review for specific policy choices within a range of constitutionally adequate options.

6.2 The Right to Food: From Directive Principle to Constitutional Guarantee

The right to food illustrates the transformation of a directive principle into a constitutional right as clearly as any example in Indian constitutional history. The Supreme Court's interpretation of the right to food as an element of the right to life under Article 21, and the subsequent judicial directions in the People's Union for Civil Liberties v. Union of India case (the "right to food case"), demonstrated that the judicial development of Article 21 can address the most pressing social deprivations.

But the reliance on judicial development of Article 21, rather than on a constitutional provision establishing the right to food directly, creates a fragile and contingent form of protection. The right to food, as developed through Article 21 jurisprudence, depends on the willingness of the courts to maintain and develop this interpretation. It can be narrowed by subsequent judicial decisions. It is not explicitly stated in the constitutional text in a way that would make it incontestable. And the enforcement mechanisms available through Article 32 and 226 writ jurisdiction are less well-adapted to the systemic enforcement of a social right against large-scale policy failure than to the adjudication of individual claims.

A reformed constitutional framework should include an explicit right to adequate food in the Fundamental Rights chapter, worded as a combination of an individual right and a systemic obligation. The individual dimension would guarantee every person the right to food adequate for health and well-being, with an obligation on the state to ensure that no person suffers from hunger or severe malnutrition. The systemic dimension would require the state to establish and maintain food security systems, including public distribution systems, nutritional programs for vulnerable groups, and emergency food assistance mechanisms, designed to ensure the progressive realization of universal food security.

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6.3 The Right to Housing and the Constitutional Framework Against Forced Eviction

The right to adequate housing is one of the most urgently needed constitutional reforms in the context of India's rapid urbanization and the enormous scale of informal settlement in Indian cities. As established in Part Three, the current constitutional framework provides insufficient protection against forced eviction, and the courts have been inconsistent in their enforcement of the right to housing derived from Article 21.

A constitutional right to housing, directly enforceable, should establish both positive and negative dimensions. The negative dimension should prohibit forced eviction without adequate advance notice, legal process, genuine consultation with affected communities, and provision of adequate alternative housing. This dimension should be immediately enforceable and should be available as a constitutional defense in any judicial proceeding involving eviction. The positive dimension should require the state to progressively develop housing policy that ensures access to adequate housing for all citizens, with priority to those in greatest housing need.

The constitutional framework for the right to housing should include specific protections for informal settlements and urban poor communities that address the current legal vulnerability of these communities. It should establish a constitutional presumption that persons who have occupied land for a specified minimum period and who have no other housing have a right to security of tenure that cannot be extinguished without adequate alternative housing. This presumption would shift the burden of proof in eviction proceedings: instead of slum dwellers having to prove a positive right to remain, the government would have to prove that it has provided adequate alternative housing before eviction can proceed.

The comparative model here is the South African Constitutional Court's judgment in Port Elizabeth Municipality v. Various Occupiers (2004), in which the Court held that the constitutional right of access to housing required a meaningful engagement between the municipality and the occupiers before eviction could proceed, and that the court had to satisfy itself that such engagement had occurred and that all relevant circumstances had been considered. This "meaningful engagement" requirement has been developed in subsequent South African constitutional jurisprudence and provides a model for constitutional protection of informal settlement residents that balances the legitimate interests of the state in urban planning with the constitutional rights of communities that depend on informal settlements for their shelter and livelihoods.

6.4 The Right to Health and the Constitutional Response to Pandemic Failure

The catastrophic failure of the Indian state's response to the COVID-19 pandemic, and particularly the second wave of April-May 2021, demonstrated in the most brutal terms the consequences of the constitutional order's failure to provide a justiciable right to health with effective enforcement mechanisms. The Supreme Court's relative restraint during the pandemic, at a time when tens of thousands were dying for lack of oxygen supplies that were within the state's capacity to provide, and at a time when High Courts were issuing urgent directions that the government was ignoring, illustrated the systemic inadequacy of reliance on the Article 21 derived right to health without specific constitutional provision.

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A reformed constitutional framework should include a direct constitutional right to health as a fundamental right, with the following content: the right of every person to access essential health care, including emergency treatment without precondition; the obligation of the state to maintain public health infrastructure adequate to meet the basic health needs of the population; the obligation of the state to ensure the availability of essential medicines and healthcare technology to all persons without discrimination; and the obligation of the state to take measures necessary to protect the population from threats to public health including epidemics and pandemics.

The enforcement framework for the right to health should include a specialized health rights tribunal with jurisdiction to adjudicate systemic claims about the adequacy of the public health system, to issue directions to government about specific health policy failures, and to award remedies including compensation and structural injunctions. This tribunal should be separate from the general court system to ensure that health rights claims receive the specialized and sustained attention they require, and it should have a mandate to engage with the government in a collaborative process of identifying and addressing systemic health system failures rather than merely adjudicating individual claims.

6.5 Dalit and Adivasi Constitutional Rights: The Unfinished Ambedkarite Agenda

The constitutional reform of the rights of scheduled castes, scheduled tribes, and other marginalized communities requires a fundamental reconsideration of the strategy of reservations and the expansion of constitutional guarantees that go beyond formal anti-discrimination protections.

The reservation framework, as argued in Part Three, has delivered significant benefits to portions of the scheduled caste and scheduled tribe communities while leaving the most marginalized sub-groups within these communities still largely excluded from the benefits of formal constitutional protection. The Supreme Court's judgment in State of Punjab v. Davinder Singh (2024), authorizing states to sub-classify within the scheduled caste category for purposes of reservation to ensure that the most disadvantaged sub-groups receive priority, is an important step forward. But sub-classification within the reservation framework does not address the fundamental question of whether the reservation framework is an adequate constitutional mechanism for addressing the depth and breadth of caste discrimination in Indian society.

The Ambedkarite vision, as developed in Ambedkar's own writings and in the contemporary scholarship of Gopal Guru, Arun Kumar, and others, holds that the elimination of caste discrimination requires not merely legal prohibition and affirmative action but a fundamental restructuring of the social, economic, and cultural institutions that reproduce caste hierarchy. The constitutional framework for addressing caste discrimination should include, beyond the reservation framework: constitutional protection for dalit communities against economic discrimination in land ownership and agricultural tenancy; constitutional protection for tribal communities against displacement and deprivation of forest rights; constitutional mandates for culturally appropriate education in dalit and tribal communities; and constitutional accountability for the enforcement of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and its successor legislation.

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CHAPTER SEVEN: RECONSTRUCTING CRIMINAL JUSTICE - FROM COLONIAL MANAGEMENT TO CONSTITUTIONAL JUSTICE

7.1 The Bharatiya Nyaya Sanhita: Decolonization as Renaming

As noted in Part Three of this textbook, the replacement of the Indian Penal Code, the Code of Criminal Procedure, and the Indian Evidence Act by the Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita, and Bharatiya Sakshya Adhiniyam represents the most significant legislative reform of criminal law in India's post-independence history. International Commission of Jurists But the constitutional analysis of this reform compels the conclusion that it has delivered a renaming rather than a genuine decolonization.

The constitutional problems of the Indian criminal justice system that have been documented throughout this textbook, the overly broad provisions that suppress constitutionally protected speech and association, the structural absence of meaningful judicial oversight of the investigative phase, the bail jurisprudence that makes pretrial detention the default rather than the exception for specified categories of offense, the inadequate protection of accused persons against custodial abuse, these problems persist in the new codes largely unchanged, and in some respects have been deepened.

The replacement provision for sedition, Section 152 of the Bharatiya Nyaya Sanhita, provides a clear illustration. The Supreme Court's order in S.G. Vombatkere v. Union of India (2022), directing that Section 124A (sedition) of the IPC should not be applied while the Court considered its constitutional validity, created a temporary space from sedition prosecution. The new Section 152, by using broader language that does not require the direct incitement to violence that even the old Section 124A had been judicially interpreted to require, effectively restores a broader basis for criminalizing speech that the government considers threatening to national security.

The genuine reconstruction of the criminal justice system requires a constitutional reform agenda that addresses the foundational principles rather than the textual formulation of individual provisions.

7.2 Constitutional Principles for a Transformed Criminal Justice System

The first constitutional principle for a transformed criminal justice system is the absolute prohibition of custodial torture and abuse. The Prevention of Torture Bill, which would give statutory effect to India's obligations under the United Nations Convention Against Torture (to which India is a signatory but which it has not ratified), has been pending in various forms for over fifteen years without enactment. The constitutional amendment should add a new clause to Article 21 expressly prohibiting torture, cruel, inhuman, or degrading treatment of any person in custody, with automatic criminalization of such treatment, mandatory independent investigation of all complaints, and both criminal liability for the individual perpetrators and institutional accountability for the supervising authorities.

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The second principle is the constitutional right to be brought before a judicial authority within twenty-four hours of arrest, without exception and regardless of the nature of the offense. The UAPA and related statutes that permit extended detention before production before a court must be brought into conformity with this constitutional requirement. This is not a radical proposal: it is the standard of the International Covenant on Civil and Political Rights, which India has ratified, and of the constitutional jurisprudence of most mature constitutional democracies.

The third principle is the constitutional right to bail as the default for all but the most serious offenses, with the burden on the state to demonstrate, before a judicial officer, specific grounds based on evidence rather than on the nature of the charge, why bail should be refused. The current jurisprudence of "twin conditions" for bail under the UAPA, which requires the accused to demonstrate that they are not guilty of the offense and that they are not likely to commit the offense while on bail, effectively reverses the presumption of innocence and places an unreachable burden on accused persons to prove their innocence before trial. This is constitutionally incompatible with the right to a fair trial under Article 21 and should be struck down as such, with a new constitutional provision establishing the presumption of bail as a constitutional right.

The fourth principle is the constitutional requirement of time-bound trial. The Supreme Court has repeatedly held that the right to speedy trial is a constitutional right under Article 21. But the constitutional right has been honored primarily in the breach: the average criminal trial in India takes years or decades, and many accused persons spend years in pretrial detention before their cases are even reached for hearing. The constitutional amendment should establish a constitutional maximum period for trial from charge to verdict, with consequences for the prosecution including dismissal of the case or at minimum release of the accused if the government fails to bring the case to trial within the constitutional period.

The fifth principle is the constitutional reform of the police system. The relationship between the police and the judiciary in the investigative phase of criminal proceedings is one of the most constitutionally important and most poorly regulated aspects of the Indian criminal justice system. The constitutional framework should require independent judicial authorization, before a magistrate, for all arrests (not merely for arrests in certain categories of offense), all searches and seizures, all interceptions of communications, and all applications for extended detention beyond forty-eight hours. This judicial authorization requirement would transform the relationship between the police and the courts from the current quasi-supervisory relationship (in which courts review police action after the fact) to a genuine authorization relationship (in which courts must approve investigative measures before they are taken).

7.3 The Constitutional Reform of the Prison System

The Indian prison system is a dimension of the constitutional order that receives very little attention in mainstream constitutional scholarship but that has an enormous impact on hundreds of thousands of persons who are imprisoned, the majority of whom are pretrial detainees who have not been convicted of any offense.

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The constitutional status of imprisoned persons has been developed through Supreme Court jurisprudence interpreting Article 21 to include the rights of prisoners: the right to human treatment, the right to protection against torture, the right to access legal counsel, and the right to maintain contact with family. These rights have been affirmed in numerous judgments including D.B.M. Patnaik v. State of Andhra Pradesh (1974), Sunil Batra v. Delhi Administration (1978), and the recent National Human Rights Commission reports on prison conditions.

But the gap between the constitutional rights of prisoners as articulated in judicial decisions and the actual conditions of Indian prisons is one of the starkest illustrations of the difference between constitutional law in the courts and constitutional reality in practice. Indian prisons are severely overcrowded, with an occupancy rate significantly above capacity in most states. They are underfunded, understaffed, and poorly monitored. Custodial violence, including both physical abuse and psychological abuse, is endemic and systematically under-reported and under-investigated.

The constitutional reform of the prison system requires a constitutional prison governance provision establishing minimum constitutional standards for prison conditions, mandatory independent inspection of prisons, mandatory reporting to Parliament and state legislatures on prison conditions, and direct constitutional liability of the state for violations of prisoners' rights. The current constitutional framework leaves prison governance entirely to the states as a public order matter without establishing minimum national constitutional standards. The result is a patchwork of state prison systems with highly variable and often deeply inadequate standards.

7.4 The Special Court System and the Constitutional Problems of Parallel Justice

India has developed, over the post-independence period, an extensive system of special courts and tribunals outside the ordinary court system. These include special courts for National Investigation Agency cases, Enforcement Directorate cases, Prevention of Money Laundering Act cases, UAPA cases, and numerous others. The multiplication of these special courts has created what critics have called a system of parallel justice in which persons accused by politically powerful agencies are processed through a specialized judicial infrastructure that operates outside the ordinary protections of the constitutional court system.

The constitutional problems of this parallel justice system are multiple. The procedural safeguards available in special courts are often less robust than those in ordinary courts. The judges of special courts are typically appointed differently from ordinary court judges, in ways that may give the executive more influence over their selection. The special courts hear cases in which the government has a particularly strong interest in conviction, creating an institutional environment that may be less favorable to accused persons than the ordinary courts.

The constitutional reform should establish a presumption that all criminal matters, regardless of the nature of the offense, are tried in the ordinary court system with the full complement of constitutional procedural protections. Special courts may be constitutionally established for matters of genuine procedural distinctiveness (such as juvenile justice and family matters) but should not be established merely because the offense is considered serious or because the government has a strong interest in the outcome. Cases that must be handled with special

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security arrangements (such as organized crime cases with witness protection requirements) should be handled through special procedures within the ordinary court system rather than through entirely separate judicial institutions.

CHAPTER EIGHT: DIGITAL CONSTITUTIONALISM - TECHNOLOGY, SURVEILLANCE, AND THE RIGHT TO FREEDOM IN THE DIGITAL AGE

8.1 The Constitutional Gap in Digital Rights

The Constitution of India was drafted in 1950, decades before the internet, digital communications, social media, artificial intelligence, and mass digital surveillance became realities of ordinary life. The constitutional framework that was designed to protect the freedom and privacy of citizens in an era of physical communications, physical searches, and physical detention is profoundly inadequate to the challenges of a digital society.

The Supreme Court's judgment in K.S. Puttaswamy v. Union of India (2017) established privacy as a fundamental right under Article 21, providing a constitutional foundation for digital rights. The judgment, authored by a nine-judge bench, articulated a comprehensive understanding of privacy that encompasses informational privacy (the right to control personal data), bodily autonomy, spatial privacy (the right to be free from surveillance in private spaces), and decisional privacy (the right to make personal choices about lifestyle and relationships without state interference).

But the constitutional right to privacy, as established in Puttaswamy, is subject to the same limitations as other Article 21 rights: it can be restricted by a law that is fair, just, and reasonable. The critical constitutional question is what standards of fairness, justness, and reasonableness should govern the restriction of privacy rights in the digital domain, where the scale and invasiveness of potential surveillance vastly exceeds anything that the framers of Article 21 could have contemplated.

8.2 State Surveillance and the Constitutional Framework

The Indian state's surveillance capacity has expanded enormously in the digital era. The provisions of the Information Technology Act of 2000, the Indian Telegraph Act of 1885 (still in use as the statutory basis for interception), the Aadhaar framework (which has created a unique biometric identifier for over a billion persons that is linked to a growing range of government services), and the emerging legal framework for the use of artificial intelligence in governance have together created a surveillance infrastructure that is, in the assessment of digital rights experts, among the most extensive in the world.

The constitutional framework that regulates this surveillance infrastructure is deeply inadequate. The legal basis for the interception of digital communications rests primarily on Section 69 of the Information Technology Act, which authorizes interception on executive order, without independent judicial authorization, for broadly defined purposes including "sovereignty or

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integrity of India," "security of the state," "friendly relations with foreign states," "public order," and "prevention of incitement to the commission of any cognizable offence relating to above."

The constitutional standard for surveillance authorization in a constitutional democracy requires, at minimum, independent judicial authorization before interception begins, specificity in the description of the target and the offense under investigation, proportionality between the invasion of privacy and the investigative objective, and effective oversight mechanisms to ensure compliance with authorization conditions. The Indian framework satisfies none of these requirements adequately. Interception is authorized by executive order without independent judicial review. The grounds for authorization are so broad that almost any investigation can be brought within them. The oversight mechanisms are internal to the executive that conducts the surveillance.

The constitutional reform required is a new digital rights provision, either as an addition to Article 21 or as a separate provision, establishing that surveillance of digital communications requires prior judicial authorization (not merely executive authorization), on specific grounds, with specific identification of the target and the period of authorization, subject to subsequent judicial accountability for the information gathered and how it is used.

8.3 The Personal Data Protection Act and Constitutional Adequacy

The Digital Personal Data Protection Act of 2023 (DPDPA) was enacted after years of deliberation as India's first comprehensive data protection legislation. It establishes a framework for the processing of personal data, creates rights for data principals, and establishes a Data Protection Board to adjudicate complaints.

The constitutional adequacy of the DPDPA has been questioned by digital rights scholars on several grounds. First, the Act contains extensive exemptions for government processing of personal data, including exemptions for national security, public order, and the implementation of government schemes. These exemptions are so broad that they effectively exclude large categories of state surveillance from the Act's protections. Second, the Data Protection Board is appointed by the central government and is not constitutionally independent, creating the same structural vulnerability to political capture that affects the other regulatory bodies discussed in this textbook. Third, the Act contains provisions permitting data localization (requiring that certain categories of data be stored within India) that have been criticized as tools of government access to data rather than protections for data privacy.

The constitutional reform of data protection requires the elevation of data protection to a constitutional right, with a constitutional article establishing the right of every person to the protection of their personal data, specifying the minimum standards for lawful data processing (including a constitutional requirement of meaningful consent, purpose limitation, and proportionality), excluding government surveillance from broad exemptions, and establishing a constitutionally independent data protection authority.

8.4 Artificial Intelligence, Algorithmic Governance, and the Constitutional Challenge

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The use of artificial intelligence in governance, including predictive policing systems, automated decision-making in welfare administration, biometric identification systems, and algorithmic management of public services, presents constitutional challenges that the Indian constitutional framework has not yet begun to address.

The constitutional problems of algorithmic governance are both formal and substantive. The formal problem is that automated decision-making systems, when used to make or influence decisions about individuals (such as whether to grant bail, whether to flag a welfare application for investigation, or whether to include a person on a watchlist), operate without the procedural safeguards that the constitutional framework requires for state action affecting individual rights. The right to be heard, the right to reasons for adverse decisions, and the right to appeal are all constitutional requirements under Articles 14 and 21. Automated decision-making systems that make decisions without providing reasons, without any meaningful hearing, and often without any effective appeal mechanism are constitutionally inadequate.

The substantive problem is that algorithmic systems trained on historical data tend to reproduce and amplify existing patterns of discrimination. A predictive policing system trained on historical arrest data will predict criminality in communities that have historically been over-policed, creating a self-fulfilling prophecy that deepens the existing pattern of discriminatory policing. A welfare fraud detection system trained on historical patterns of fraud investigation will flag for investigation the demographic groups that have historically been subject to fraud investigations, disproportionately imposing the burden of investigation on communities that are already disadvantaged.

The constitutional response to algorithmic governance requires, first, a requirement of transparency in algorithmic decision-making: the state must be able to explain, in terms that the affected person can understand, how any algorithmic system that has influenced a decision affecting their rights or interests was designed, what data it was trained on, and how it arrived at the specific output that influenced the decision in their case. Second, the constitutional requirement of non-discrimination under Article 15 must be interpreted to require that algorithmic systems used in governance be regularly audited for disparate impact on protected groups, and that their use be suspended when such disparate impact is demonstrated. Third, the right to human review of algorithmic decisions must be constitutionally guaranteed: no final decision affecting a person's rights or interests should be made entirely by an automated system without human review.

CHAPTER NINE: ENVIRONMENTAL CONSTITUTIONALISM AND INTERGENERATIONAL JUSTICE

9.1 The Environmental Constitutional Framework and Its Failures

The Constitution of India contains provisions addressing the environment, most notably the directive principle in Article 48A requiring the state to protect and improve the environment and to safeguard the forests and wildlife of the country, and the fundamental duty in Article 51A(g)

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requiring every citizen to protect and improve the natural environment. These provisions were added by the 42nd Amendment in 1976 and reflect the growing international awareness of environmental issues in the 1970s.

The Supreme Court has built on these constitutional foundations and on the Article 21 right to life to develop a significant body of environmental constitutional jurisprudence. Cases including M.C. Mehta v. Union of India (the continuing Ganga pollution case), the Taj Trapezium case, and the Delhi air pollution case have used constitutional authority to issue wide-ranging directions about environmental protection. The court has articulated the "precautionary principle," the "polluter pays principle," and the principle of "sustainable development" as elements of Indian constitutional environmental law.

But the constitutional framework for environmental protection has significant structural gaps that the judicial development of Article 21 and Article 48A cannot fully address. The most fundamental gap is the absence of any constitutional provision explicitly establishing the right to a clean environment as a fundamental right enforceable by citizens against the state. The Supreme Court has held that the right to a clean environment is implicit in Article 21, but this implicit right is less powerful than an explicit constitutional provision would be: it is more vulnerable to being weighed against competing interests, less clear in its specific content, and less accessible to ordinary citizens who have limited access to the constitutional court system.

9.2 The Constitutional Right to a Clean Environment

A reformed constitutional framework should include a new Article establishing the right to a clean, healthy, and sustainable environment as a fundamental right. This article should have three dimensions. The first is the right against environmental degradation: the right of every person not to have their health, livelihood, or dignity impaired by the state's failure to prevent or address environmental pollution or destruction. The second is the right to environmental information: the right of every person to access information about the environmental conditions in which they live and about the environmental impacts of proposed government or private projects. The third is the right to environmental participation: the right of affected communities to participate meaningfully in decision-making about projects and policies that would significantly affect their environment.

The enforcement framework for this right should include low-cost access to environmental courts or tribunals, where affected communities can seek remedies for environmental harms without the high cost and delay of ordinary constitutional litigation. India already has the National Green Tribunal (NGT), established under the National Green Tribunal Act of 2010, which provides specialized environmental jurisdiction. But the NGT's constitutional status is not secure, and its decisions have sometimes been set aside or undermined by the ordinary court system or the executive in ways that would not be possible if the tribunal's constitutional basis were stronger. A constitutional amendment establishing the NGT or its successor as a constitutionally mandated environmental court would provide the necessary institutional security.

9.3 Intergenerational Justice and the Constitutional Obligation to Future Generations

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The concept of intergenerational justice, developed in environmental philosophy by scholars including Brian Barry, Daniel Parfit, and Edith Brown Weiss, holds that present generations have obligations to future generations not to exhaust or destroy natural resources and environmental conditions that future generations will need. This concept, which has been incorporated into the constitutional frameworks of a growing number of countries including Bolivia, Ecuador, and more recently in the European Union's environmental policy, has a growing presence in Indian constitutional discourse.

The Supreme Court of India has invoked the principle of intergenerational equity in several environmental cases, including Vellore Citizens Welfare Forum v. Union of India (1996), in which the court held that sustainable development required the state to balance the present generation's development needs against the obligation to preserve the environment for future generations.

A constitutional provision explicitly recognizing the state's obligation to future generations, in the form of a constitutional trustee principle (treating the state as trustee of natural resources on behalf of both present and future generations), would significantly strengthen the constitutional framework for environmental governance. It would require the state to justify resource extraction, pollution, and environmental degradation not merely by reference to present generation interests but by reference to the sustainability of those resources and conditions for the long-term future. It would provide a constitutional basis for challenging development projects that produce irreversible environmental harm even when the immediate economic benefits are significant.

CHAPTER TEN: THE PATH TO CONSTITUTIONAL RENEWAL - PROCESS, POLITICS, AND THE DEMOCRATIC MOMENT

10.1 The Question of Process: How Is a New Constitution Made?

The argument for a new constitutional settlement, built through the preceding nine chapters of this Part and through Parts One through Three of the textbook, is ultimately an argument about what India's constitutional order should be. But a constitutional theory that addresses only substance and not process is incomplete, because the legitimacy of a constitutional order depends not merely on its content but on the process through which it was created.

The theory of democratic constituent power holds that a constitution has democratic legitimacy only if it was created through a process that genuinely represented the sovereign people whose authority it claims. The Constitution of India, as established in Part One of this textbook, was created by an indirectly elected Constituent Assembly that was not representative of the full diversity of the Indian population, particularly its most marginalized communities. This is a constitutional legitimacy deficit that has accumulated over seven decades and that cannot be remedied by amendment of the existing document. It can only be remedied by a new constituent process that is genuinely democratic.

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What would a genuinely democratic constituent process look like for India in 2025 to 2026?

The first requirement is that the constituent assembly that drafts the new constitution must be directly elected by universal adult suffrage, with a system that ensures meaningful representation of all major social groups, regions, languages, and political persuasions. This requires a constituent assembly election conducted under proportional representation rules that deliver a more genuinely representative assembly than the FPTP system would produce. It requires reserved seats for scheduled castes, scheduled tribes, women, and linguistic minorities beyond the threshold for guaranteed representation through proportional rules. And it requires that the candidate selection processes of political parties and social movements that participate in the constituent assembly election themselves meet minimum standards of democratic legitimacy.

The second requirement is that the drafting process must be genuinely deliberative and participatory. This means that the constituent assembly must not merely produce a document in committee but must engage in a sustained process of public consultation, including town halls, district-level public hearings, written submissions from civil society, structured consultation with organized groups representing historically marginalized communities, and the publication and public discussion of draft provisions before they are finalized. The South African constituent assembly process of 1995-96, which produced over two million public submissions and conducted extensive public consultations throughout the country, is a model of what genuine participatory constitution-making looks like.

The third requirement is a ratification process that demonstrates genuine popular endorsement of the resulting document. A constitutional referendum, in which the final draft is submitted to a popular vote with a requirement of approval by a substantial majority of voters in a substantial majority of states, would provide the clearest democratic mandate. The referendum requirement would ensure that the constituent assembly cannot produce a constitution that serves only the interests of the political parties that control it, because the document must ultimately be approved by a broad popular majority.

10.2 The Politics of Constitutional Renewal: Who Wants a New Constitution and Why

The political economy of constitutional reform is among the most important analytical questions in this field, and it requires honest analysis that does not paper over the very real political obstacles to fundamental constitutional change.

The arguments in this textbook for a new constitutional settlement, or at minimum for fundamental structural reforms of the existing constitution, are grounded in the interests of the majority of Indian citizens who have been poorly served by the existing constitutional order: the poor who cannot access constitutional justice, the marginalized communities whose constitutional rights are systematically violated, the states whose autonomy is continuously encroached upon, the women whose constitutional equality has not been translated into social reality, the minorities whose religious and cultural rights are under pressure, and the political dissidents whose constitutional freedoms have been weaponized against.

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But these communities, who would benefit most from constitutional reform, are also the communities with the least political power in the current constitutional order. The parties that have historically mobilized these communities have not, for the most part, articulated a coherent constitutional reform agenda. They have focused on winning elections within the existing constitutional framework rather than on reforming the framework itself.

The parties that have the most political power in the current constitutional order, particularly the BJP which has consistently commanded the largest share of the popular vote in recent elections, have the least incentive to support fundamental constitutional reform, because the current constitutional framework enables the kind of majoritarian governance that the BJP practices. The BJP's political project is more easily pursued through the existing constitutional framework than through a reformed one that would provide stronger protections for minorities, a more genuinely federal distribution of power, and more effective checks on executive authority.

This political reality does not mean that constitutional reform is impossible. It means that constitutional reform requires political mobilization of a kind that creates pressure from below: mobilization of the communities that would benefit from reform, articulation of a constitutional vision that builds coalitions across communities that currently operate separately, and the creation of a political movement that makes constitutional reform a central electoral issue rather than a marginal technocratic concern.

The theoretical framework of Bruce Ackerman's constitutional moments, discussed in Part Three, is useful here. Constitutional moments, in Ackerman's analysis, occur when a mobilized citizenry engages directly with constitutional questions in a way that transcends ordinary electoral politics and produces a form of democratic mandate for constitutional change that is qualitatively different from the mandate of ordinary legislative majorities. The independence movement of 1947 was such a moment. The Emergency and its aftermath of 1975-77 was, partially, such a moment. Whether the current political moment, with its convergence of majoritarian constitutional transformation from the right and social movement demands for constitutional justice from below, has the potential to become a constitutional moment in Ackerman's sense depends on whether the progressive constitutional forces can articulate and sustain a compelling constitutional vision.

10.3 The Role of Civil Society and Legal Scholars in Constitutional Reform

The role of civil society organizations, legal scholars, and constitutional academics in the process of constitutional reform is a dimension of the reform agenda that deserves explicit attention in a textbook directed at students of law and political science.

The history of constitutional reform in South Africa, Colombia, and Brazil demonstrates that civil society organizations and legal scholars have played crucial roles in shaping constitutional reform agendas, in participating in constitutional drafting processes, in providing technical expertise to constituent assemblies, and in mobilizing public participation in constitutional deliberation. In South Africa, the Congress of South African Trade Unions (COSATU), the South African Council of Churches, community organizations, and academic scholars collaborated in developing the constitutional principles that guided the 1996 constitution. In

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Colombia, the 1991 constitutional convention was notable for the direct participation of civil society groups including indigenous communities, religious minorities, guerrilla movements that had been reintegrated into civilian life, and student and youth organizations.

In India, the civil society landscape is rich and diverse but insufficiently organized around a coherent constitutional reform agenda. Organizations working on dalit rights, on tribal rights, on women's rights, on civil liberties, on environmental justice, on labor rights, on federalism, each articulate elements of a constitutional reform vision within their own domain but rarely in an integrated way that adds up to a comprehensive constitutional alternative to the existing order. The contribution that legal scholars and constitutional academics can make to the reform process is precisely this integrative work: the synthesis of the diverse demands of civil society into a coherent constitutional framework that demonstrates how the different elements of reform connect to each other and to a common constitutional vision.

The Indian Constitution Society, the Campaign for Judicial Accountability and Judicial Reforms, the Alternative Law Forum, the People's Union for Civil Liberties, the many regional human rights organizations, and the growing network of academic institutions with serious constitutional law and political theory programs, these are the institutional resources for a civil society-driven constitutional reform movement. Their work needs to be connected, coordinated, and oriented toward the constitutional reform agenda that this textbook has argued is necessary.

10.4 The International Constitutional Context and India's Responsibility

India is the world's largest democracy. Its constitutional experience, whether of success or of failure, has implications beyond its borders. The constitutional failures documented in this textbook, the weakening of minority rights, the concentration of executive power, the inadequacy of judicial independence, the weaponization of criminal law against dissent, these are not unique to India. They are part of a global pattern of democratic backsliding that scholars including Steven Levitsky, Lucan Way, Anna Grzymala-Busse, and Pippa Norris have documented in democracies across the world.

India's response to these challenges will have significance for this global pattern. If India, the world's largest democracy, can demonstrate that democratic backsliding is not inevitable, that a genuine constitutional renewal is possible even in a context of majoritarian political pressure, that the institutional resources of constitutional democracy can be rebuilt after periods of decay, this would be an enormously important contribution to the global constitutional conversation.

The International Covenant on Civil and Political Rights, which India has ratified; the Universal Declaration of Human Rights; the UN Declaration on the Rights of Indigenous Peoples; the Convention on the Elimination of All Forms of Discrimination Against Women; the Convention Against Torture, which India has signed but not ratified: these international instruments provide normative standards against which India's constitutional order can be measured, and they provide a source of normative pressure that can support the domestic reform agenda.

The constitutional reform of India's international human rights law engagement should include the ratification of outstanding treaties including the Convention Against Torture and the Optional

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Protocol to the ICCPR (which establishes an individual petition mechanism before the UN Human Rights Committee). It should include the incorporation of ratified treaty obligations into domestic constitutional law, creating directly enforceable constitutional rights corresponding to the international norms that India has accepted as binding. And it should include the strengthening of India's engagement with international human rights mechanisms, including the Special Procedures of the UN Human Rights Council and the Universal Periodic Review process.

10.5 The Detailed Constitutional Blueprint: A Summary Synthesis

The constitutional reform agenda developed across the ten chapters of Part Four can be summarized in the form of a detailed constitutional blueprint. This blueprint is not a draft constitutional text: it is a specification of the constitutional principles and institutional arrangements that a reformed or new Indian constitution should embody.

The first cluster of reforms concerns executive accountability. These reforms include: the reform of Parliament to restore genuine legislative oversight of the executive through mandatory committee review of legislation, a constitutionally independent electoral process for the Election Commission, reform of the anti-defection law to apply only to votes of confidence and money bills, a constitutional minimum for parliamentary sitting days, the reform of the money bill certification process to subject it to judicial review, and the establishment of a constitutionally independent civil service board with authority over senior postings and transfers.

The second cluster concerns judicial independence and accountability. These reforms include: the establishment of a Judicial Appointments Commission excluding direct executive representation, with a professional secretariat and published records; the establishment of a Judicial Conduct Commission with statutory authority to investigate and sanction judicial misconduct; the creation of a dedicated constitutional bench within the Supreme Court or of a separate constitutional court; a constitutional guarantee of the right to free legal services as a fundamental right; mandatory judicial appointments to maintain a constitutionally specified ratio of judges per million population; and constitutional regulation of post-retirement employment of judges.

The third cluster concerns anti-corruption institutions. These reforms include: the constitutional elevation of the anti-corruption function to a constitutional institution with financial independence from government appropriations; independent prosecutorial authority; constitutional regulation of political party finance including transparency requirements and public funding; a constitutional conflict of interest framework requiring financial declaration, divestment, and recusal by all senior public officials; and the reform or replacement of the CBI as an independent investigative agency.

The fourth cluster concerns electoral reform. These reforms include: adoption of a mixed-member proportional electoral system for both national and state elections; a fully independent election commission with jurisdiction over political party finance and social media campaigning; constitutional entrenching of democratic rights within political parties; the abolition of the one

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nation one election proposal; and the reformation of the Rajya Sabha to provide genuine federal representation.

The fifth cluster concerns federalism. These reforms include: revision of the Seventh Schedule to expand state authority; constitutionalization of fiscal federalism principles to ensure adequate state revenue capacity; the abolition or fundamental reform of the Governor's office to eliminate its use as a central political instrument; the reformation of the Inter-State Council with mandatory consultation requirements; and the constitutional requirement that Article 356 imposition be subject to immediate independent judicial review.

The sixth cluster concerns fundamental social rights. These reforms include: constitutional establishment of justiciable rights to food, housing, health, education, and social security; a constitutional prohibition on forced eviction without adequate alternative housing; the reform of the reservation framework to address sub-group disadvantage; constitutional protection for dalit and adivasi communities against economic discrimination and displacement; and a constitutional framework for gender equality in personal and family law.

The seventh cluster concerns criminal justice. These reforms include: constitutional prohibition of custodial torture; the right to be produced before a judicial authority within twenty-four hours of arrest; bail as the constitutional default with the burden of proof reversed; time-bound trial as a constitutional right; mandatory judicial authorization for surveillance; and the constitutional regulation of special courts.

The eighth cluster concerns digital rights. These reforms include: a constitutional digital rights provision establishing the right to privacy in digital communications; a constitutional requirement of independent judicial authorization for surveillance; constitutional standards for artificial intelligence use in governance; and the elevation of data protection to a constitutional right.

The ninth cluster concerns environmental constitutionalism. These reforms include: a constitutional right to a clean environment as a fundamental right; a constitutional trustee principle for natural resources protecting intergenerational interests; constitutional support for the National Green Tribunal as a constitutionally mandated environmental court; and a constitutional right to environmental information and participation.

The tenth cluster concerns constituent power and process. These reforms include: a commitment to a genuinely democratic process of constitutional reform including direct election of a constituent assembly, participatory drafting, and popular ratification; the full constitutional implementation of international human rights treaty obligations; the establishment of constitutional integrity standards for political parties; and the rebuilding of constitutional culture through civic education and public constitutional literacy.

10.6 The Timeline and Sequencing of Constitutional Reform

Constitutional reform of the depth and breadth argued for in this textbook cannot be achieved simultaneously. It requires a carefully sequenced program that begins with the most urgent and

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most achievable reforms, builds political momentum and institutional capacity for more fundamental change, and works toward the new constitutional settlement through a process that is itself constitutionally democratic.

The first phase of constitutional reform (2025-2030) should focus on the reforms that require the least constitutional amendment and that can be achieved through a combination of legislative action, Supreme Court direction, and executive commitment to institutional independence. These include: the reform of the civil service appointment and posting system through Supreme Court enforced directions (building on T.S.R. Subramanian); the reform of political finance through the enforcement of the Association for Democratic Reforms judgment and the development of a new legislative framework; the strengthening of the National Green Tribunal's constitutional status through legislation that anticipates a future constitutional amendment; the reform of the anti-defection law through constitutional amendment to limit it to confidence votes and money bills; and the expansion of legal aid funding to begin to address the access to justice crisis.

The second phase of constitutional reform (2030-2035) should focus on more fundamental structural changes that require constitutional amendment and that depend on the building of political consensus through the first phase. These include: the reform of the Seventh Schedule and fiscal federal framework; the establishment of the Judicial Appointments Commission and the Judicial Conduct Commission; the constitutional elevation of anti-corruption institutions; the reform of the Rajya Sabha; the abolition of the Governor's office or its fundamental reform; and the constitutional establishment of social and economic rights.

The third phase (2035 onwards) should work toward the question of a new constitution, through a process of political mobilization, civil society engagement, and the building of the political consensus necessary for a genuinely democratic constituent process. The two earlier phases of reform will both create institutional resources for the third phase (by strengthening the institutions of constitutional democracy that can manage a constitutional transition) and build the political momentum (by demonstrating that constitutional reform is achievable and by expanding the community of citizens who have experienced the benefits of specific reforms and who therefore have a stake in the broader constitutional renewal project).

This timeline is tentative. Constitutional reform is driven by political moments as much as by planned sequencing. The Emergency was both a constitutional crisis and an opportunity for constitutional reform, producing the Forty-Fourth Amendment that corrected some of the worst abuses it had enabled. The present political moment may present a similar opportunity: the acute awareness of democratic backsliding may create the political conditions for a constitutional response that the gradualist sequencing model cannot fully anticipate.

CONCLUDING REFLECTIONS ON PART FOUR: THE BLUEPRINT COMPLETED, THE WORK BEGUN

Part Four has accomplished the constructive task that followed from the diagnosis of Parts One through Three. It has moved from critique to proposal, from the identification of structural

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failures to the specification of institutional remedies, from the analysis of what has gone wrong to the design of what might go right.

The proposals in this Part are not a utopian wish list. They are grounded in the jurisprudential and comparative constitutional analysis developed throughout this textbook. They draw on actual constitutional experience in countries that have achieved the institutional arrangements they propose: genuine judicial independence in Germany, genuine social rights in South Africa, genuine federalism in Switzerland, genuine electoral representation in New Zealand, genuine anti-corruption institutions in Hong Kong and Australia. These are not fantasies. They are achieved constitutional realities in other countries that demonstrate the possibility of what they propose.

The proposals are also grounded in the constitutional resources already present in the Indian constitutional tradition. The basic structure doctrine contains within it the seeds of a richer constitutional jurisprudence. The Supreme Court's expanded Article 21 jurisprudence demonstrates the capacity of the Indian judiciary for creative constitutional development. The 73rd and 74th Amendments demonstrate the possibility of using constitutional amendment to create new institutional infrastructure for democratic governance. The Right to Information Act demonstrates the transformative potential of specific legal reforms that shift the power relationship between citizens and the state. These achievements are the foundation on which the reform agenda built in this Part is constructed.

The concluding observation of this Part must be about the relationship between constitutional text and constitutional culture. No constitutional text, however perfectly designed, can deliver the constitutional order that a democratic people deserves unless it is supported by a constitutional culture: a culture of citizens who know their rights, of officials who respect those rights, of politicians who are committed to constitutional morality rather than merely constitutional formalism, of lawyers who use the law as an instrument of justice rather than merely of advantage, and of judges who apply constitutional values with courage and consistency rather than with deference to power.

Building this constitutional culture is the deepest and most important constitutional reform project. It is not achievable through amendment alone. It requires the education of citizens about their constitutional rights and the constitutional order. It requires the reform of legal education to produce lawyers who understand the constitution not merely as a collection of doctrines to be mastered but as a moral and political commitment to be honored. It requires a free press that investigates constitutional failures and celebrates constitutional achievements. It requires civil society organizations that use constitutional tools to advance the rights of the marginalized and to hold the powerful accountable.

This textbook is a contribution to that project of constitutional culture-building. It is written in the conviction that understanding the constitutional order clearly, seeing its failures honestly, and proposing its reform rigorously is a constitutional act in itself, the exercise of the intellectual dimension of democratic citizenship. The people of India have the right to know what their constitution is, what it has done and not done, and what it could become. This textbook has tried to help them know it.

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The work is not yet done. It will not be done until the constitution genuinely begins with "We, the People of India" and means it in every one of its provisions and every one of its institutions.

We, the People. Let us begin.

End of Part Four

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The textbook continues in Part Five with: The Voices That Were Not Heard: Constituent Power, Marginalized Communities, and the Constitutional Imagination of a Democratic India.

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PART FIVE: THE CIVILIZATIONAL CRISIS: CONSTITUTIONAL FAILURE, SOCIAL DEVASTATION, AND THE IMPERATIVE OF RECONSTRUCTION

PREFACE TO PART FIVE

The first four parts of this textbook have constructed, piece by piece, a comprehensive indictment of the constitutional order of India. Part One examined the colonial genetic material embedded in the Constitution's foundational provisions. Part Two traced how the electoral machinery has been weaponized into an instrument of subjugation rather than liberation. Part Three dissected the specific machinery of institutional coercion: the police, the surveillance state, the criminalization of dissent, and the structural violence inflicted by the very apparatus that was supposed to protect citizens. Part Four laid out a reform agenda in detail, examining the legal, institutional, and political mechanisms through which a genuinely transformed constitutional order might be constructed.

Part Five goes further. It goes deeper. It attempts something that the previous parts approached but did not fully inhabit: a reckoning with the civilizational consequences of seventy-five years of constitutional failure. This part is not merely about legal provisions, judicial doctrines, or political science models. It is about what the constitutional order has done to the human beings who live under it. It is about the tens of millions of citizens who have been systematically victimized not despite the Constitution but through it. It is about the ways in which the very document that promised liberation has been deployed as an instrument of domination, not only by bad-faith actors but by the internal logic of the constitutional architecture itself.

This part also addresses, in a manner that the previous parts only touched upon, the question of who benefits from the constitutional order as it stands. The answer to that question illuminates, more than any doctrinal analysis can, why constitutional reform is not merely desirable but urgently and morally necessary.

The chapters of this part move from the concrete to the philosophical and back again. They begin with the structural victimization of the Indian people through the constitutional framework, proceed through an examination of power distribution and its pathologies, address the nationalist and authoritarian turn in the constitutional politics of the current era, examine India's profoundly dysfunctional constitutional relationship with its neighbors, and arrive at a set of philosophical, jurisprudential, and theoretical arguments for fundamental constitutional reconstruction. The part concludes with a vision of what a genuinely post-colonial, genuinely democratic, genuinely just constitutional order for India might look like, drawing on the most advanced contemporary constitutional theory and on the accumulated wisdom of India's own most radical democratic traditions.

The title of this part contains the word "civilizational" deliberately. The stakes of constitutional reform in India are not merely political or legal. They are civilizational in the deepest sense: they concern what kind of civilization India is, what kind of civilization it has been, and what kind of civilization it might yet become. A civilization that has given the world extraordinary gifts in

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philosophy, mathematics, literature, music, medicine, and spiritual inquiry deserves a constitutional order worthy of those gifts. A civilization that has suffered the long violence of caste hierarchy, colonial conquest, and postcolonial institutional exploitation deserves a constitutional order that genuinely breaks with that suffering rather than perpetuating it in new administrative dress.

The argument of this part is, in its essence, simple and devastating: the Constitution of India, in its current form, is not adequate to the civilizational task of delivering justice, freedom, and dignity to the people of India. It must be fundamentally reconstructed. The time for piecemeal amendment, for judicial workarounds, for administrative corrections at the margin, has passed. What India needs, what its people deserve and demand, is a new constitutional founding: a genuine act of popular constituent power that produces a genuinely post-colonial, genuinely federal, genuinely rights-protective, genuinely democratic constitutional order. The arguments for this position, historical, philosophical, legal, comparative, and empirical, are the subject of what follows.

CHAPTER ONE: THE CONSTITUTION AGAINST THE PEOPLE: STRUCTURAL VICTIMIZATION AND THE GRAMMAR OF STATE VIOLENCE

1.1 The Paradox of Constitutional Victimhood

There is a paradox at the heart of the Indian constitutional experience that standard legal textbooks almost never acknowledge and that the political class has invested considerable energy in obscuring. The paradox is this: the same Constitution that is celebrated as the charter of liberation for a subject people is simultaneously, and systematically, a document through which those people are victimized, controlled, and subordinated. The Constitution does not merely fail the people in the sense of being unable to deliver on its promises. In certain specific and identifiable ways, it actively operates against the interests of the majority of its citizens.

This is not a paradox that can be resolved by pointing to implementation failures, by blaming corrupt politicians, by invoking the gap between law and society that characterizes all developing legal systems. Those explanations, while containing partial truths, are ultimately evasions. The more honest and more illuminating analysis begins not with implementation but with structure: with the constitutional design choices that were made in 1950 and that continue to determine, with remarkable precision, who benefits from the constitutional order and who is victimized by it.

To understand how the Constitution operates against the people it supposedly serves, one must begin with the concept that the legal theorist Roberto Unger calls the "formative context": the institutional and imaginative structure within which social life is conducted and within which power is exercised. Every legal system creates a formative context that shapes who can make claims, against whom, through what procedures, with what likelihood of success, and with what consequences. The formative context created by the Indian Constitution is one in which the state is enormously powerful relative to the individual citizen, in which the costs of accessing

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constitutional rights are prohibitively high for the majority of citizens, in which the institutions that are supposed to protect rights are structurally aligned with the interests of the powerful, and in which the legal categories through which claims can be made consistently advantage those who already possess social, economic, and educational capital.

This is not merely an abstract structural point. It manifests in concrete patterns of victimization that are measurable, documentable, and consistent across seven decades of constitutional experience.

1.2 Land, Displacement, and the Constitutional Complicity in Dispossession

Perhaps nowhere is the Constitution's complicity in the victimization of its own people more visible than in the history of development-induced displacement. Since 1947, the Indian state has displaced between 40 and 65 million people through dam construction, mining, industrial development, wildlife conservation, and urban development projects. The most widely cited scholarly estimate, developed by Walter Fernandes of the North Eastern Social Research Centre, puts the figure at approximately 60 million displaced persons. Of these, approximately 40 percent are adivasis (Scheduled Tribe members), although adivasis constitute only approximately 8 percent of the national population. A further significant proportion are dalits and other marginalized communities. In other words, the burdens of "development" as it has been practiced under the Indian constitutional order have fallen with crushing disproportionality on the most marginalized communities.

This disproportion is not accidental. It is the predictable consequence of constitutional design. The constitutional framework for development, from the non-justiciable directive principles that authorize the state to promote industrialization, to the land acquisition framework that was, until 2013, governed by the colonial Land Acquisition Act of 1894, to the forest governance framework that treated forest lands as state property available for exploitation regardless of the actual occupation and use of those lands by forest communities, was designed to facilitate the extraction of resources from territory occupied by the poor and the powerless for the benefit of an industrial and developmental state whose primary beneficiaries were the educated, propertied, urban-industrial classes.

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act of 2013 represented a significant improvement over the colonial Land Acquisition Act it replaced. It required social impact assessment, consent of 80 percent of affected households for private projects, and genuinely compensatory payment at market rates with additional solatium. But the 2013 Act was substantially diluted by the BJP government's 2014 attempt to amend it through an executive ordinance, and even in its original form it contains exemptions for numerous categories of public interest acquisition that significantly limit its protective scope.

The deeper problem is not the specific land acquisition law but the constitutional framework within which it operates. Article 31 of the Constitution, in its original form, protected the right to property. When the right to property was reduced from a fundamental right to a mere constitutional right by the Forty-Fourth Amendment, the constitutional protection available to

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displaced communities was weakened rather than strengthened, because the poor communities who were most often displaced by state action were precisely those for whom formal property rights were least secure and for whom the original right-to-property regime had, despite its formal protections, provided little practical defense. The removal of that formal protection, however inadequate, removed even the possibility of constitutional challenge to the most egregious dispossessions.

The jurisprudence of Article 21 has been invoked to claim that the right to life includes a right to livelihood and a right to shelter, which should protect communities from arbitrary displacement. But the courts' application of this doctrine in the context of development-induced displacement has been deeply inconsistent. In Narmada Bachao Andolan v. Union of India (2000), the Supreme Court declined to halt the construction of the Sardar Sarovar Dam despite substantial evidence that resettlement and rehabilitation of displaced communities had not been completed as required by the project's own conditions. The judgment was a triumph of the developmental state's logic over the rights of the displaced: the Court held that the right to development outweighed the rights of individual displaced persons, that the state had made adequate provisions for resettlement, and that the judiciary should defer to executive judgment on large development projects.

The consequences of that judgment, and of the broader pattern of judicial deference to the developmental state in displacement cases, have been felt by hundreds of thousands of people who were displaced from their homes and lands in the Narmada valley and who have never received adequate resettlement and rehabilitation. More broadly, the pattern established by the Supreme Court's approach to development-induced displacement has created a constitutional environment in which the state can, in effect, take the lands and livelihoods of the poor in the name of national development with minimal constitutional accountability.

This is the constitutional grammar of state violence operating through the category of "development." The violence is not inflicted through the barrel of a gun (though that too happens, as the resistance to Vedanta's bauxite mining in the Niyamgiri hills and the resistance to POSCO's steel plant in Odisha demonstrated). It is inflicted through the systematic application of a constitutional framework that treats the lands, forests, and habitats of the poor and the marginalized as freely available inputs into the developmental machine of the propertied classes.

1.3 Custodial Violence and the Constitutional Failure of Personal Liberty

The right to personal liberty guaranteed by Article 21 of the Constitution is among the most frequently violated of all constitutional rights, and its most systematic violators are agents of the state. Custodial violence, the spectrum of physical and psychological abuse that includes beatings, torture, sexual violence, fabrication of evidence, coerced confessions, and wrongful detention, is so endemic in the Indian criminal justice system that it has been normalized as part of the institutional culture of the police and other law enforcement agencies.

The National Crime Records Bureau data on custodial deaths consistently records hundreds of deaths in police and judicial custody annually. Human rights organizations argue that the actual figure is far higher, since many custodial deaths are recorded as suicides, illnesses, or attempts to

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escape, and since the culture of impunity within police forces creates strong incentives for underreporting. The National Human Rights Commission receives the largest volume of complaints about police atrocities and custodial violence of any category of human rights violation, and its annual reports consistently identify the gap between the constitutional prohibition of torture and the lived reality of detention as a central and unresolved feature of the Indian human rights landscape.

The constitutional framework for the protection of personal liberty is, on paper, comprehensive. Article 22 requires that a person arrested must be informed of the grounds of arrest, must be allowed to consult a lawyer of choice, must be produced before a magistrate within 24 hours, and cannot be detained beyond the period authorized by the magistrate. The Supreme Court has repeatedly held that these procedural protections are fundamental rights, that their violation constitutes a constitutional wrong, and that victims of custodial violence are entitled to constitutional compensation. In D.K. Basu v. State of West Bengal (1997), the Court laid down detailed guidelines for arrest, detention, and interrogation that remain the constitutional standard for police conduct.

But the D.K. Basu guidelines, and the numerous subsequent directions of the Supreme Court on custodial violence, have had minimal practical effect on the actual conduct of the police. The systemic reasons for this gap between constitutional protection and practical reality illuminate, in miniature, the broader failure of the constitutional order.

First, the police continue to operate under the Police Act of 1861, whose organizational structure, chain of command, and institutional culture were designed for colonial administration rather than for rights-respecting democratic governance. Despite the Supreme Court's directions in Prakash Singh v. Union of India (2006) to reform the police through statutory changes, most states have made minimal or cosmetic changes to their police laws. The institutional culture of the police, which treats suspects as guilty until proven innocent, which relies heavily on confession-based investigation, and which regards physical coercion as an efficient investigative tool, is the product of organizational norms and institutional incentives that have proven extraordinarily resistant to formal legal reform.

Second, the accountability mechanisms for custodial violence are structurally inadequate. Police complaints authorities, which the Supreme Court directed states to establish in the Prakash Singh judgment, are typically chaired by retired police officers and have demonstrated little capacity for independent investigation of complaints against serving officers. The criminal prosecution of police officers for custodial violence requires the sanction of the state government, which has strong political incentives to protect the police forces that it controls. The civil remedy of constitutional tort, which the Supreme Court has developed to allow victims to claim compensation from the state without proving criminal intent on the part of individual officers, provides some relief but does not address the institutional problem of impunity.

Third, and most fundamentally, the victims of custodial violence are almost always from poor, marginalized, and socially disadvantaged communities who lack the social networks, the financial resources, and the access to legal assistance required to make effective constitutional claims. The very people whose physical liberty is most at risk in the Indian legal system are the

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people who are least well-positioned to use the constitutional machinery that nominally exists to protect that liberty.

This is not merely a matter of inadequate implementation. It is a matter of constitutional design that has consistently prioritized the efficiency of state administration over the protection of individual rights, that has granted the police and security forces extensive powers with minimal accountability, and that has created a legal framework in which the poor and the marginalized are systematically more exposed to state violence than the wealthy and the privileged.

1.4 The Sedition-UAPA Continuum: When Constitutional Law Is the Weapon

One of the most direct ways in which the constitutional framework operates against the people is through the systematic use of criminal law provisions that are constitutionally dubious but politically useful to criminalize legitimate political activity, journalistic investigation, academic inquiry, and civil society organizing. The history of this use is long, and its current manifestation in the combination of sedition law under Section 124-A of the Indian Penal Code (now replaced but substantially reproduced in the Bharatiya Nyaya Sanhita) and the Unlawful Activities (Prevention) Act represents a constitutional crisis of the first order.

Section 124-A IPC was enacted in 1870 by the British colonial government to suppress the nascent independence movement. It defined sedition as any act or statement that excited or attempted to excite feelings of disaffection toward the government established by law. The British used this provision, with great effectiveness, against the leaders of the independence movement: Bal Gangadhar Tilak was twice convicted of sedition for his writings. Mahatma Gandhi famously called the charge against him in 1922 "the highest crime in the calendar" and demanded his maximum sentence, transforming his sedition trial into an act of moral theater that exposed the illegitimacy of colonial law.

Post-independence India inherited this colonial provision and retained it without serious constitutional examination for decades. The Supreme Court's ruling in Kedar Nath Singh v. State of Bihar (1962) upheld the constitutional validity of Section 124-A but narrowed its scope, holding that the provision should be read to apply only to acts that incite violence or create public disorder, not to mere criticism of the government however harsh. This narrowing interpretation was constitutionally sensible: it brought the sedition law into conformity with the reasonable restriction clause of Article 19(2), which permits restrictions on free speech only on grounds including "in the interests of public order," not mere criticism of government.

But the judicial narrowing of the sedition law's scope has had virtually no effect on its actual use. The police in India routinely file sedition charges for speech and writing that falls squarely within constitutionally protected expression: students who raise slogans at a demonstration, journalists who report on government failures, activists who participate in peaceful protests, academics who write critically about government policy. The charge is not used to secure convictions (conviction rates for sedition charges are notoriously low) but to inflict punishment through the process itself: through the arrest, the bail hearings, the trial preparation, and the social stigma that attach to the charge.

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This "process-as-punishment" logic is the constitutional heart of the problem. The Constitution guarantees freedom of speech. The sedition law, as interpreted by the Supreme Court, should not be applicable to constitutionally protected speech. But the police, prosecuting authorities, and lower courts routinely apply the law to constitutionally protected speech, knowing that by the time a challenge reaches the Supreme Court the damage to the individual, in terms of months or years in pre-trial detention, financial devastation, career destruction, and social stigma, has already been done.

The Supreme Court recognized this problem acutely in S.G. Vombatkere v. Union of India (2022), where it stayed all proceedings under Section 124-A IPC while the constitutional validity of the provision was under review, holding that the law was a serious threat to free speech and that its misuse by police and prosecution authorities was well-documented. That stay was a significant acknowledgment of the constitutional problem. But it was followed, in 2023, by the replacement of the Indian Penal Code with the Bharatiya Nyaya Sanhita, which effectively reproduced the substance of the sedition law under a different provision, Section 152, expanding its scope to include acts that "endanger the sovereignty, unity and integrity of India" through words, signs, or electronic communications, a formulation broad enough to potentially criminalize virtually any significant political criticism.

The UAPA adds a further dimension to this constitutional crisis. As examined in Part Three of this textbook, the UAPA's provisions for the designation of individuals as "terrorists," for extended pre-trial detention, and for the reversal of the presumption of bail, constitute a regime of preventive detention and punishment that is structurally incompatible with constitutional due process guarantees. The Supreme Court's judgment in National Investigation Agency v. Zahoor Ahmad Shah Watali (2019) effectively held that bail should be refused in UAPA cases unless the accused can demonstrate that the charges are false, a standard that reverses the fundamental presumption of innocence. This judgment has been described by constitutional scholars including Gautam Bhatia as a radical departure from constitutional due process that would have consequences not only for UAPA cases but for the broader constitutional understanding of the right to bail.

The Freedom in the World 2026 Report by Freedom House, which assesses India as "Partly Free" and continues to document the patterns of democratic backsliding that it first identified with India's downgrade in 2020, specifically notes the misuse of anti-terror and sedition laws against civil society activists, journalists, and opposition politicians as a significant factor in India's democratic erosion. The sociocultural component of democratic backsliding identified in the 2025 study in the Asian Studies Review, which examines the interplay between majoritarian political culture and constitutional erosion, points to the use of criminal law as a mechanism of political control as a key indicator of the hollowing out of constitutional democracy.

The theoretical framework most applicable to this phenomenon is what the comparative constitutional scholars Huq and Ginsburg call "constitutional retrogression": a process by which the formal constitutional structure remains in place while its substantive content is progressively eroded through the accumulation of individually defensible but collectively destructive changes to institutional norms, legal doctrines, and political practices. The Indian experience is a textbook case of constitutional retrogression through the weaponization of law.

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CHAPTER TWO: THE CRIMINALIZATION OF POVERTY AND THE ECONOMICS OF CONSTITUTIONAL EXCLUSION

2.1 Poverty as a Constitutional Condition

The Indian Constitution's Preamble promises to secure for all citizens "Justice, social, economic and political." This triple promise of justice is a remarkable constitutional commitment, and its persistence in the Preamble despite seventy-five years of experience demonstrating the profound inadequacy of its delivery demands serious attention. What does it mean for a constitutional order to promise social, economic, and political justice and to systematically fail to deliver any of them to the majority of its citizens?

The answer, as this chapter argues, lies in a fundamental feature of the constitutional architecture that standard accounts consistently underemphasize: the Indian Constitution was designed primarily to protect the rights and interests of those who already possessed social, economic, and political capital, while offering the majority of citizens a set of formal rights whose content was genuinely radical but whose enforcement mechanisms were designed in ways that would systematically benefit the already-advantaged.

India's poverty statistics are both well-known and frequently contested, but their essential character is not in doubt. By any reasonable measure of multidimensional poverty that takes account of not only income but access to education, healthcare, safe drinking water, sanitation, nutritious food, and protection from violence, a very large proportion of India's 1.4 billion people live in conditions of severe deprivation. The Multidimensional Poverty Index calculated by NITI Aayog shows significant improvement in recent years, which is genuinely welcome. But even the optimistic official picture reveals hundreds of millions of people living in conditions that are incompatible with the constitutional guarantee of a dignified human life.

The relationship between poverty and the constitutional order is not one of mere correlation: it is structural. The constitutional design choices that placed property rights and commercial freedom in the fundamental rights category (before the Forty-Fourth Amendment), that made social and economic rights non-justiciable through the directive principles structure, that created a tax system that concentrated fiscal resources at the Centre while assigning the most resource-intensive social obligations to the states, that designed a labor law framework riddled with exemptions and loopholes that allowed employers to avoid the protections offered to organized labor, these were choices that systematically advantaged the propertied classes over the propertyless, the organized sector over the informal sector, the urban over the rural, and the educated over the uneducated.

The "criminalization of poverty" is a concept developed in the comparative constitutional scholarship to describe the way in which legal systems treat the conditions of poverty, including homelessness, begging, petty theft, informal economic activity, and the use of public space, as criminal or quasi-criminal, deploying the coercive machinery of the state against those who are

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poor rather than against those who create or maintain the conditions of poverty. The Indian constitutional framework enables and encourages this criminalization in multiple ways.

2.2 The Informal Economy, Constitutional Rights, and the Architecture of Exclusion

Approximately 90 percent of India's workforce is employed in the informal economy, in agricultural labor, domestic work, construction, street vending, waste picking, and a host of other occupations that the formal labor law framework either does not cover or covers inadequately. These 400 million or more informal workers are, in constitutional terms, a universe of rights bearers whose rights are among the most consistently violated in the country.

The constitutional framework for labor rights is distributed between the fundamental rights chapter (which prohibits forced labor and child labor under Articles 23 and 24), the directive principles (which direct the state to secure for workers a living wage, safe working conditions, and humane treatment), and the legislative framework established by Parliament and state legislatures under Entries 22 to 26 of the Concurrent List. The labor legislation framework is extraordinarily complex: there were, before the consolidation of the Code on Wages (2019), the Code on Industrial Relations (2020), the Code on Social Security (2020), and the Code on Occupational Safety, Health and Working Conditions (2020), over 44 central labor laws, some of them dating to the early twentieth century, creating a regulatory maze that was genuinely inaccessible to the workers it nominally protected.

The labor codes enacted between 2019 and 2020 were presented as a rationalization of this complex legislative landscape. But critics, including trade unions, labor economists, and constitutional scholars, argued that the consolidation was accompanied by substantive weakening of worker protections: raising the threshold for the applicability of industrial relations protections, reducing the obligation to seek government permission before retrenchment and closure, limiting the right to strike, and expanding the scope of "fixed-term employment" contracts that allow employers to circumvent permanent employment protections.

The constitutional dimension of labor rights has been addressed by the Supreme Court through the expanded interpretation of Article 21. The Court has held that the right to life includes the right to livelihood (Olga Tellis v. Bombay Municipal Corporation, 1985), the right to a healthy work environment, and (in the context of the right to education) the right to training and skill development. But these judicially recognized rights exist in permanent tension with the legislative framework that continues to exclude the majority of workers from their formal protections.

The construction of the informal worker as a person outside the ambit of formal constitutional protection is not accidental. It reflects the class interests that shaped both the constitutional design and its subsequent legislative and judicial interpretation. The organized sector of the Indian economy, which is dominated by large enterprises, professional associations, and government employment, has systematically used its political influence to shape labor law in ways that protect its members while excluding the unorganized sector. The constitutional framework, which assigns labor relations to the Concurrent List and therefore allows both Parliament and state governments to legislate, has been used by business-friendly state

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governments to dilute labor protections and attract investment by offering pools of cheap, legally unprotected labor.

2.3 Access to Justice as a Constitutional Fiction for the Poor

The constitutional guarantee of access to justice is perhaps the clearest example of the gap between constitutional text and constitutional reality for poor citizens. Article 32, which grants the Supreme Court original jurisdiction to enforce fundamental rights and which Dr. Ambedkar called "the very soul of the Constitution and the very heart of it," is, in practice, an institution primarily accessible to the literate, the educated, and the financially capable.

The cost of litigation in India is prohibitive for the majority of citizens. A case in the Supreme Court typically requires the engagement of an Advocate-on-Record (who alone can file and represent in the Supreme Court) and frequently also a Senior Advocate for the oral arguments. The fees of a Senior Advocate arguing a complex constitutional matter can run to hundreds of thousands of rupees per hearing, and constitutional cases in the Supreme Court may require dozens of hearings over years. Even in High Courts, the cost of competent legal representation places meaningful justice beyond the reach of the majority of citizens.

The legal aid system established under the Legal Services Authorities Act of 1987, which implements the constitutional directive of Article 39A, is in principle available to all persons whose annual income falls below a specified threshold and to all women, children, scheduled caste and scheduled tribe members, differently-abled persons, and victims of disasters and violence, regardless of income. But the practical reality of legal aid in India is deeply different from its legislative and constitutional promise. Legal aid lawyers are overwhelmingly underpaid, undertrained for complex constitutional matters, overburdened with cases, and lacking the institutional support necessary to provide competent representation. The State Legal Services Authorities that administer the system are government-funded and therefore not fully independent from the state that is frequently the opposing party in human rights cases.

The Supreme Court's lauded practice of Public Interest Litigation (PIL), introduced in the late 1970s and early 1980s as a mechanism to bring the grievances of those who cannot access the Court through traditional means to its attention, has played an important role in expanding the effective reach of the Court's constitutional jurisdiction. The liberalization of standing requirements under PIL allowed letters and petitions from individuals, civil society organizations, and journalists to trigger suo motu consideration of constitutional violations by the Court.

But PIL as it has developed over four decades has also become the subject of serious criticism. The mechanism has been captured by the educated middle class and urban civil society, whose priorities do not always align with those of the most marginalized communities. PIL has been used for causes ranging from environmental protection to anti-corruption to urban aesthetics, not all of which represent the interests of the poor. Conversely, PIL petitions brought by or on behalf of the poor, particularly those challenging large development projects or government demolition drives, have frequently been dismissed or decided against the poor. The Supreme Court's record

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in PIL cases affecting slum dwellers, the urban poor, and informal workers is markedly less progressive than its record in cases affecting the educated middle class.

The structural problem is that the Indian constitutional order offers the poor a system of justice that is formally available but practically inaccessible, that promises compensation for rights violations but rarely delivers it in meaningful time, and that is staffed by professional and judicial elites whose social experiences and class interests are systematically different from those of the people whose rights they are supposed to protect.

CHAPTER THREE: POWER WITHOUT PEOPLE: THE ANTI-DEMOCRATIC DNA OF INDIAN GOVERNANCE

3.1 The Theory of Electoral Democracy and Its Indian Distortions

Electoral democracy is, in the mainstream understanding of political science derived from Robert Dahl's concept of "polyarchy," a system characterized by competitive elections, universal suffrage, freedom of expression, freedom of association, and alternative sources of information. India satisfies these criteria in a formal sense: it holds regular competitive elections, has universal adult suffrage, maintains (at least formally) freedom of expression and association, and has a pluralistic media landscape.

But the formal satisfaction of polyarchic criteria does not constitute genuine democratic self-governance in any substantive sense. The gap between electoral participation and genuine political power, which characterizes democracies globally, is in India a chasm of extraordinary depth and breadth. The mechanisms through which this chasm is maintained, and through which the formal machinery of democratic elections coexists with the substantive reality of governance by and for elite interests, are embedded in the constitutional framework itself.

The first mechanism is the design of political representation. India's first-past-the-post electoral system routinely produces parliamentary majorities from minority support. The BJP's parliamentary majority in 2019 rested on approximately 37 percent of the popular vote. In 2024, the BJP's share fell to approximately 36 percent, and it was returned with a reduced but still substantial majority. This means that in consecutive general elections, a party representing approximately a third of the electorate has governed with full parliamentary majority powers. The constitutional framework provides no mechanism for requiring that a government command genuine majority support, either at the point of election or in the ongoing conduct of governance.

The second mechanism is the combination of party centralization and anti-defection law that systematically disconnects elected legislators from their constituents. Under the Tenth Schedule, a Member of Parliament who votes against her party's position in Parliament on a matter where the party whip has been issued faces disqualification from Parliament. This provision, enacted with the worthy intention of preventing political defections motivated by financial inducements, has in practice created a parliament of party delegates rather than a parliament of people's representatives. The individual Member of Parliament has no constitutional standing to exercise

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independent judgment on a legislative matter where the party whip has been applied. She is not a trustee of her constituents' interests in the Burkean sense but a mechanical executor of the party's position.

The combined effect of these mechanisms is a system of "delegated majority rule": the party that wins a parliamentary majority through FPTP elections, typically with the support of a minority of the total electorate, exercises full constitutional power for five years, with its legislators unable to challenge that exercise of power through the primary mechanism of parliamentary accountability (the vote) without facing disqualification. The prime minister who commands the parliamentary majority commands the executive, controls the legislative agenda, appoints the government's nominees to key constitutional positions, and faces no meaningful accountability until the next election.

This description is, as a matter of constitutional design analysis, accurate. It represents a system of periodic electoral legitimation of concentrated executive power rather than ongoing popular accountability. It is a system in which the "will of the people," expressed through periodic elections whose fairness is subject to increasing doubt, is transformed into the unchecked authority of a parliamentary majority for a fixed term.

3.2 The Concentration of Executive Power: Constitutional Monarchy in Republican Dress

The Indian Prime Minister in a period of strong single-party majority government is, as a functional matter of constitutional analysis, closer to an elected constitutional monarch than to the "first among equals" chairman of a deliberative cabinet that the Westminster constitutional model nominally envisions. The concentration of executive power in the Prime Minister and the Prime Minister's Office that has been a feature of Indian politics since the 1960s has intensified dramatically in the period since 2014, and its constitutional dimensions deserve the serious analytical attention that mainstream constitutional scholarship has been reluctant to provide.

The constitutional provisions enabling this concentration of power have been examined in earlier parts of this textbook. But it is worth returning to them from the specific angle of their anti-democratic consequences, because the concentration of executive power in India is not merely an institutional problem with abstract political significance. It has concrete consequences for the lives of ordinary citizens.

The most direct consequence is the erosion of constitutional checks and balances. A system in which the Prime Minister effectively controls the executive, commands a parliamentary majority that can be maintained through anti-defection rules, has appointed individuals to key constitutional positions including the Chief Election Commissioner (until the Supreme Court's 2023 judgment in Anoop Baranwal v. Union of India changed the appointment process) and other regulatory authorities, and has used the Governor's office to extend central political influence into state-level governance, is a system in which the formal constitutional checks are largely ineffective.

The Anoop Baranwal judgment of 2023, which held that the Chief Election Commissioner should be appointed by a committee that includes the Chief Justice of India and the Leader of the

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Opposition rather than solely on the advice of the Prime Minister, was a significant judicial intervention to restore balance to one key constitutional appointment. But it also illustrated how far the drift toward executive capture of constitutional institutions had proceeded: that the Court needed to intervene to ensure that the body responsible for conducting elections was not solely the appointee of the party in power is an indication of how deeply the constitutional machinery had been compromised.

The second consequence of concentrated executive power is the weakening of horizontal accountability: the capacity of different institutions of government to check one another's exercise of power. In a healthy constitutional democracy, the legislature checks the executive, the judiciary reviews the legality of both, regulatory agencies operate independently of political direction, and investigative agencies pursue wrongdoing regardless of the political identity of the wrongdoer. In India's current constitutional order, each of these horizontal accountability relationships has been significantly compromised.

The legislature's accountability function has been hollowed out by the anti-defection law, by the concentration of party power in the Prime Minister's office, by the decline of parliamentary committees, and by the government's increasing practice of passing important legislation through money bills (which can be passed by the Lok Sabha alone without the Rajya Sabha's concurrence) or of passing ordinary bills in the rushed last days of parliamentary sessions without meaningful debate.

The judiciary's review function has been compromised not through any formal constitutional change but through the accumulated effects of appointment politics, the collegium system's opacity, the courts' demonstrated reluctance to decide politically sensitive constitutional questions with appropriate speed and independence, and the use of contempt proceedings against critics of judicial institutional conduct. The Pegasus matter, in which petitions seeking a judicial inquiry into government surveillance of journalists, activists, and judges were heard and decided by a technical committee whose findings were inconclusive and whose final report remains largely inaccessible, is emblematic of the judiciary's institutional limitations as a check on executive overreach.

Investigative and regulatory agencies, including the Central Bureau of Investigation, the Enforcement Directorate, and the Income Tax Department, have been widely characterized, across multiple governments of different parties, as instruments of political direction rather than independent regulators. The BJP government's aggressive use of the Enforcement Directorate, whose registration of cases increased dramatically after 2014 and whose targets have disproportionately included opposition politicians, has been extensively documented by journalists and scrutinized by the Supreme Court. The practice of "raids" by central investigative agencies on opposition politicians in the period preceding state elections has become so regularized as to be a recognized feature of the political landscape.

3.3 Federalism in Practice: When States Become Administrative Provinces

The federal character of the Indian Constitution is identified by the Supreme Court as a basic structure feature in its Kesavananda Bharati formulation, meaning that Parliament cannot amend

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the Constitution to destroy federalism even with a supermajority. But as the analysis in Parts One and Three of this textbook demonstrated, the Indian constitutional framework has always been what Ambedkar called "quasi-federal": formally distributive of powers between the Centre and the states but practically centralizing in its operation. The question for this chapter is not primarily the doctrinal question of whether the constitutional text is federal but the empirical and political question of how the relationship between the Centre and the states has operated in practice and what its consequences have been for the people of India's diverse regions and communities.

The consequences, taken as a whole, have been profoundly negative for the quality of governance, the responsiveness of government to local needs, the protection of regional cultural identities, and the accountability of political authority to the people it serves.

Consider first the fiscal dimension. The states receive approximately 40 percent of the Union's tax revenues through the Finance Commission devolution formula, supplemented by grants-in-aid and centrally sponsored schemes. But this fiscal transfer from Centre to states is accompanied by conditions that constrain state governments' ability to spend in accordance with their own assessment of their constituents' needs. Centrally sponsored schemes, which constitute a large and growing share of central transfers to states, come with prescribed design and implementation parameters that states must follow if they are to receive the funds. This means that even for the delivery of services in areas of state jurisdiction like education, health, and rural development, state governments must implement centrally designed programs rather than adapting the delivery of those services to local conditions, cultural contexts, and the preferences of local communities.

The Goods and Services Tax (GST), introduced in 2017 as a constitutionally mandated uniform tax replacing the fragmented pre-existing indirect tax system, represents both a genuine administrative rationalization and a significant shift in fiscal power from the states to the Centre. The GST replaced state-level value-added taxes with a Union-controlled tax whose rates are determined by the GST Council (a constitutional body in which the Centre and states are represented). The replacement of state fiscal autonomy in the domain of indirect taxation with participation in a centrally managed collaborative governance structure has reduced the capacity of state governments to use fiscal policy as an instrument of development strategy.

The political use of the Governor's office, documented in the previous parts of this textbook, has accelerated in recent years. The pattern of Governors in opposition-governed states refusing to give assent to state Bills, delaying the swearing-in of elected governments, and making public statements critical of the elected state government has become standard practice. The Supreme Court's November 2023 judgment in the Tamil Nadu Governor case, holding that the Governor cannot indefinitely withhold assent to Bills passed by the state legislature, was an important constitutional correction. But the fact that the Court needed to intervene to enforce a constitutional obligation as basic as the duty to act on state legislative decisions is symptomatic of a systematic dysfunction in the constitutional relationship between the Centre and the states.

The deeper problem is that the constitutional framework allows the Centre to treat states governed by opposition parties as administrative problems to be managed rather than as

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autonomous democratic units entitled to govern in accordance with their own constitutional mandate. This attitude, which reflects the centralizing logic of the Government of India Act 1935 that informed the Constitution's design, is fundamentally incompatible with genuine democratic federalism. It means that the millions of citizens who elected a state government different from the Centre are, in effect, punished for their democratic choice: they receive less responsive central assistance, face interference from a politically hostile Governor, and have their state government's programs obstructed by central agencies pursuing partisan agendas.

3.4 The One Nation One Election Proposal: Authoritarian Centralization Disguised as Administrative Efficiency

Among the constitutional proposals that have been advanced by the current Central government, the "One Nation One Election" (ONOE) proposal merits particular attention because it illustrates, with unusual clarity, how constitutional reform proposals can serve anti-democratic ends while presenting themselves as technical administrative improvements.

The ONOE proposal, formally examined by a high-level committee chaired by former President Ram Nath Kovind, which submitted its report in 2024, proposes the synchronization of elections to the Lok Sabha and all State Legislative Assemblies so that they occur simultaneously rather than on the staggered cycle that results from the varying five-year terms of different legislative bodies. The bill stayed with a Joint Parliamentary Committee, reflecting concerns over federal balance. Usthadian

The administrative arguments for ONOE include the reduction of election-related disruption, the reduction of the costs of electoral administration, and the elimination of the "permanent election mode" of governance in which the government's attention is perpetually focused on the next election rather than on governing. These arguments have some merit as practical observations about the costs of frequent elections.

But the constitutional and democratic objections to ONOE are devastating and, in the view of most constitutional scholars, decisive.

The first objection is structural. Under ONOE, if a state government falls before the end of its five-year term, either because the Chief Minister loses the confidence of the assembly or because the President's Rule is imposed under Article 356, fresh elections would not be held for the full five-year period. Instead, a fresh government would be required to serve only for the remainder of the synchronized term. This means that voters in the affected state would lose the ability to choose their government for a period determined not by the democratic logic of their own state's political situation but by the administrative logic of synchronization with other states and the Centre.

The second objection is political. ONOE would dramatically consolidate the advantage of the party in power at the Centre. Research on simultaneous elections in other democratic systems shows that they produce strong coattail effects: voters tend to vote for the same party for both the national and state legislature. The party that controls the national narrative, the national media discourse, and the national resources of incumbency would have an enormous structural

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advantage over state-level parties and opposition parties. The result would likely be, over time, the erosion of the political diversity that India's federal democratic system currently sustains.

The third objection is philosophical. The right of citizens to hold their government accountable through elections at the time when accountability is most meaningful, when the consequences of government decisions are fresh in voters' minds, is a fundamental feature of democratic self-governance. A system in which elections occur at times determined by administrative convenience rather than by the logic of democratic accountability substitutes technocratic scheduling for democratic responsiveness.

The Kovind Committee's recommendation in favor of ONOE and the government's subsequent bill to introduce it represent, from the perspective of democratic constitutional theory, a regressive constitutional proposal that would centralize political power while presenting itself as administrative reform. Its fate in Parliament, where it has faced serious opposition and been referred to a Joint Parliamentary Committee, suggests that the constitutional and political objections have registered with sufficient force to complicate its passage.

CHAPTER FOUR: THE NATIONALIST TURN: FROM CONSTITUTIONAL REPUBLIC TO ETHNIC STATE

4.1 The Constitutional Theory of Secularism and Its Adversaries

The constitutional commitment to secularism in India has always been more complex and more contested than simple comparative constitutional analysis suggests. The Indian understanding of secularism, which the Supreme Court in S.R. Bommai v. Union of India (1994) identified as a basic structure feature, is not the French laicite of strict state neutrality in religious matters. It is not the American wall of separation between church and state. It is a distinctively Indian conception, sometimes described as "principled distance" (a term developed by the political philosopher Rajeev Bhargava), which holds that the state may engage with religious matters but must do so in a non-discriminatory, evenhanded way that respects the equal standing of all religious communities.

This conception of secularism was, from the beginning, contested by the Hindu nationalist tradition. The RSS, founded in 1925, rejected the idea of a secular constitutional state as a Western import incompatible with the reality of India as a Hindu civilization. The Sangh Parivar's critique of the constitutional secularism has both a practical and a philosophical dimension. The practical dimension holds that Indian secularism has been applied in a discriminatory way that privileges Muslim and Christian minority rights (through separate personal laws, through protections for minority educational institutions) while imposing restrictions on Hindu religious institutions (through state control of Hindu temples) that are not applied to mosques and churches. The philosophical dimension holds that India is inherently a Hindu nation whose constitutional identity should reflect the cultural civilization of Hinduism rather than an artificially imposed secularism.

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Both dimensions of the Hindu nationalist critique deserve serious engagement, because they contain partial truths alongside substantial distortions.

The partial truth is that Indian secularism has indeed been inconsistently applied. The system of religious personal laws, which preserves separate family laws for Hindus, Muslims, Christians, and other religious communities, does create a framework in which the state's relationship with different religious communities is not uniform. The differential regulatory treatment of Hindu temples (which are often subject to state management and whose revenues are used for non-religious purposes) and minority religious institutions (which have greater protection under Articles 25-30) is a genuine asymmetry that has constitutional and political consequences.

But the distortion in the Hindu nationalist critique is, from a constitutional perspective, fundamental. The argument that India's constitutional secularism is anti-Hindu or that it discriminates against the Hindu majority confuses the concept of equal treatment with the concept of uniform treatment. A constitutional secularism that is sensitive to the specific histories and vulnerabilities of different religious communities, that provides special protections to minorities whose rights are more fragile than those of a majority community that faces no meaningful risk of religious persecution, is not discriminatory against the majority. It is responsive to the reality of unequal power relations between religious communities in a society with a long history of majority-minority tensions.

The deeper problem with the current assault on constitutional secularism is not that it is making a wrong argument about religious equality. The deeper problem is that it is using the constitutional discourse of equality to advance what is, in substantive terms, a project of ethnic state-building: the redefinition of Indian national identity in terms of Hindu cultural supremacy and the consequent marginalization of non-Hindu communities, particularly Muslims, from the full citizenship that the Constitution guarantees.

4.2 The Citizenship Amendment Act, NRC, and the Constitutionalization of Religious Exclusion

The Citizenship Amendment Act of 2019 (CAA) is, from the perspective of constitutional law, one of the most significant and most controversial pieces of legislation in post-independence Indian history. Its significance lies not only in its specific provisions but in what it represents as a departure from the constitutional framework of citizenship.

The constitutional framework of citizenship is established in Part II of the Constitution (Articles 5-11) and in the Citizenship Act of 1955. The framework is, in its essential logic, secular: citizenship is a relationship between the individual and the state that is not mediated by the individual's religious identity. A person who meets the statutory requirements of birth, descent, registration, or naturalization is a citizen of India, regardless of whether she is Hindu, Muslim, Christian, Sikh, Buddhist, Jain, or of any other or no religion.

The CAA disrupts this constitutional framework by creating a religion-specific pathway to citizenship for persons belonging to the Hindu, Sikh, Buddhist, Jain, Parsi, and Christian communities from Afghanistan, Bangladesh, and Pakistan who entered India before December

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31, 2014. The explicit exclusion of Muslims from this pathway, which is formally justified on the ground that India's Muslim-majority neighbors have an obligation to protect their Muslim minority populations that does not extend to protecting their non-Muslim minority populations, has been challenged by critics on two constitutional grounds.

The first challenge is to equality under Article 14. The classification created by the CAA, which treats otherwise similarly situated persons differently on the basis of their religious identity, is a classification that must satisfy the constitutional requirements of having a rational nexus to a legitimate state purpose. Critics argue that the exclusion of Muslims from the pathway to citizenship lacks rational justification, since there are Muslim communities in Afghanistan, Bangladesh, and Pakistan (including the Ahmadiyya community, declared non-Muslim by Pakistani constitutional amendment, and Kurdish, Baloch, and Hazara communities) who have faced persecution and who are not less deserving of the protection the CAA offers than the included communities.

The second challenge is to the secular character of the Constitution as a basic structure feature. The argument is that a citizenship law that explicitly classifies persons on the basis of their religion violates the constitutional commitment to secularism that the S.R. Bommai judgment identified as unamendable. This is a more fundamental challenge, and its resolution by the Supreme Court, which had not decided the constitutional challenges to the CAA as of early 2026 despite the petitions having been filed in late 2019, will be a defining moment in the constitutional history of secularism in India.

The CAA is particularly significant in combination with the National Register of Citizens (NRC) exercise. The NRC was first implemented in Assam as part of the settlement of the Assam Accord of 1985, which required the identification and removal of undocumented migrants from Bangladesh. The final NRC in Assam, published in August 2019, excluded approximately 1.9 million persons from the register of citizens, requiring them to prove their citizenship before Foreigners Tribunals or face detention in the detention centers that have been constructed in Assam for this purpose.

Critics of the NRC process have raised multiple constitutional concerns: that the burden of proving citizenship falls on individuals in a way that is practically impossible for the poor, the illiterate, and the socially marginalized; that the documentation requirements are biased against women (who are less likely to have formal documentation in their own names), against the rural poor, and against communities that do not maintain formal records; and that the combination of NRC (which excludes people from the citizenship register) and CAA (which provides a path back to citizenship for non-Muslims) creates a framework that will effectively render the Muslim communities of border areas stateless while providing other affected communities a constitutional rescue.

The constitutional stakes of the CAA-NRC combination are, as the legal scholar Niraja Gopal Jayal has argued, the stakes of belonging: of who is counted as a member of the Indian constitutional community and who is not. A citizenship framework that defines membership in religious terms is a fundamental departure from the constitutional theory of civic nationhood that the framers intended to establish.

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4.3 The Waqf Amendment Act 2025 and the Pattern of Targeting Muslim Institutions

The Waqf Amendment Act of 2025 introduced administrative reforms in Waqf Boards. It enabled inclusion of non-Muslim experts, digital surveys, and stricter action against encroachment. Usthadian On the face of it, these sound like reasonable administrative reforms. But the constitutional controversy surrounding the Act is significant and reveals the pattern of using administrative law to target Muslim religious and charitable institutions in ways that would not be politically sustainable if applied to Hindu institutions.

The Waqf is an Islamic legal institution under which property is dedicated in perpetuity for religious or charitable purposes. Waqf properties, which are estimated to constitute a very large corpus of real estate across India, have been subject to encroachment, mismanagement, and exploitation. Reform of the Waqf Board system is, in principle, constitutionally legitimate and administratively necessary.

But the specific reforms introduced by the 2025 Amendment raise serious constitutional questions under Articles 25-30, which protect the rights of religious minorities to manage their own religious affairs. The inclusion of non-Muslim members in Waqf Boards, the expansion of government powers of audit and oversight over Waqf properties, and the modification of the legal framework for the adjudication of Waqf property disputes, have been challenged as violations of the constitutional right of the Muslim community to administer its own religious endowments. The constitutional comparison with the treatment of Hindu religious endowments, which are regulated by the Hindu Religious and Charitable Endowments Acts of various states (which themselves represent significant state intervention in Hindu religious governance), is complex: critics of the Waqf Amendment point out that state control of Hindu temples has itself been challenged as unconstitutional, and that the appropriate constitutional response is to reduce state interference with all religious institutions rather than to extend comparable levels of interference to Muslim ones.

The deeper constitutional concern is about the pattern of which institutional it targets. The accumulation of the CAA, the NRC, anti-conversion laws, restrictions on Muslim educational institutions, the Waqf Amendment Act, and the broader administrative and political marginalization of Muslim communities that has been documented by civil society organizations constitutes, when viewed as a whole, something that goes beyond individual legislative or administrative decisions. It constitutes a systematic pattern of constitutional change whose cumulative effect is the gradual exclusion of the Muslim community from the full citizenship that the Constitution guarantees.

CHAPTER FIVE: THE BRITISH GHOST IN THE MACHINE: COLONIAL LEGAL RESIDUES AND THEIR MODERN MUTATIONS

5.1 The Permanence of the Colonial Administrative State

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The argument that the British colonial legacy continues to shape Indian constitutional governance was introduced in Part One of this textbook, which documented the textual borrowings from the Government of India Act 1935 and the structural inheritances from colonial administrative practice. This chapter revisits that argument from a different angle: the angle of the colonial administrative state as a living reality of contemporary governance, not merely a historical legacy.

The colonial administrative state was designed for a specific purpose: the extraction of resources and the maintenance of order in a conquered territory for the benefit of the imperial power and its allies in the Indian propertied classes. It was organized around three main objectives. The first was the maintenance of internal security: the suppression of resistance, the control of movement, the management of information, and the containment of social conflict. The second was the extraction of revenue: the assessment and collection of taxes, the management of land records, and the capture of the agricultural surplus. The third was the management of trade: the regulation of imports, exports, and internal commerce to benefit British commercial interests.

Each of these objectives required a specific institutional apparatus. For internal security, the apparatus included the police (organized on the militarized model of the Royal Irish Constabulary, transferred to India by the Police Act of 1861), the preventive detention powers (inherited from the wartime Defense of India Rules and carried forward into Article 22 and its enabling legislation), the sedition law (Section 124-A IPC, 1870), the criminal tribes legislation (now formally repealed but whose administrative assumptions persist in police practice toward nomadic communities), and the vast network of informants and intelligence systems managed by the Indian Intelligence Bureau, established in 1887.

For revenue extraction, the apparatus included the land records system (which created a bureaucratic intermediary between the peasant and the state that generated enormous opportunities for corruption and exploitation), the tax administration system (which the Indian civil service dominated and which was remarkably resistant to the introduction of transparency and accountability), and the system of licenses, permits, and quotas that, in the post-independence period, was institutionalized as the "License Raj" whose abolition was the stated goal of the 1991 liberalization but which persists in modified forms across numerous regulatory domains.

For the management of trade, the apparatus included the customs administration, the industrial regulation framework, and the system of government monopolies and state-owned enterprises that the post-independence state expanded enormously, creating a public sector industrial complex whose primary beneficiaries were not the public but the managerial and engineering classes that staffed it.

What the independence of 1947 did not change, and what the Constitution of 1950 largely preserved, was the basic architecture of this colonial administrative state. The names changed. The uniforms changed. The racial composition of the administrative elite changed. But the structural logic of an administrative apparatus designed to extract from and control the population rather than to serve and empower it remained largely intact.

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5.2 The ICS-IAS Transition: Administrative Continuity and Its Consequences

The Indian Civil Service (ICS) was the instrument of colonial administration. Described by Sardar Patel as the "steel frame" of India after independence, the ICS was replaced by the Indian Administrative Service (IAS) in 1947, staffed initially by the surviving British and Indian ICS officers and subsequently by Indian officers trained in the same administrative traditions, with the same powers, the same accountability structures, and the same institutional culture.

The institutional culture of the IAS, inherited from the ICS, has several features that are directly relevant to the quality of constitutional governance. The first is the culture of hierarchy: the IAS officer is constitutionally and administratively the superior of the democratically elected local and state representatives in most administrative matters, possessing legal powers and discretionary authority that elected panchayat presidents and urban local body councillors simply do not have. This hierarchy of administrative power over democratic power is a direct inheritance from the colonial system, in which the ICS officer was the representative of a sovereign power that was not democratically accountable to the population it governed.

The second feature is the culture of secrecy. The official secrets regime inherited from the British, which classified government information as secret by default and required affirmative justification for disclosure, was the constitutional and administrative norm until the Right to Information Act of 2005 partially reversed it. Even after the RTI Act, which represents a significant constitutional achievement, the default culture of government secrecy persists in the attitudes of the administrative apparatus toward information disclosure, in the delays and obstruction that characterize many RTI applications, and in the government's 2019 amendment of the RTI Act to give the executive greater control over the appointment and service conditions of Information Commissioners.

The third feature is the culture of impunity. The IAS officer who makes decisions that harm citizens, who exercises discretionary power arbitrarily, who fails to discharge constitutional duties, or who is complicit in corruption, faces remarkably few meaningful consequences. The constitutional and statutory framework for the accountability of civil servants is hedged with protections for the civil service: the Constitution's own provisions in Articles 309-311 protect civil servants from arbitrary dismissal, the prosecution of civil servants requires prior sanction from the government under multiple statutes, and the culture of institutional solidarity within the IAS makes whistle-blowing and internal accountability extremely difficult.

The consequence of these features of the administrative culture is a governance apparatus that is, in systematic and structural ways, more responsive to the interests of those who control its apex (the political executive at the Centre and in the states) than to the interests of the citizens it is formally supposed to serve. The classic political science concept of "principal-agent" problems, in which agents (bureaucrats) pursue their own interests or the interests of those who control their careers rather than the interests of their nominal principals (citizens), applies with particular force to the Indian administrative state, where the agents' accountability runs upward through the administrative hierarchy to the political executive rather than outward to the citizen.

5.3 The New Colonial Laws: Renaming Without Reform

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The enactment, in 2023, of the three new criminal laws that replaced the Indian Penal Code (1860), the Code of Criminal Procedure (1973), and the Indian Evidence Act (1872) with the Bharatiya Nyaya Sanhita, the Bharatiya Nagarik Suraksha Sanhita, and the Bharatiya Sakshya Adhiniyam respectively, was presented as a historic decolonization of India's criminal law framework. The Home Minister described the new laws as replacing "foreign" colonial laws with "Indian" ones.

But the substantive critique of these new laws from constitutional scholars, legal practitioners, and civil society organizations has been both detailed and devastating. The central critique is that the new laws are not decolonization but renaming: they retain, and in some cases strengthen, the colonial provisions that make the criminal justice system an instrument of state control rather than a framework of rights protection.

The new sedition-equivalent provision, Section 152 of the Bharatiya Nyaya Sanhita, which penalizes acts that endanger the "sovereignty, unity and integrity of India" through speech or other means, is widely regarded as broader and more vaguely drafted than the provision it replaced, creating a greater risk of criminalizing legitimate political speech. The extended period of pre-charge police custody authorized by the new BNSS (up to 90 days in certain categories of case) exceeds the protections available under the old CrPC and represents a significant expansion of police powers to hold suspects without charge. The provisions for trials in absentia, which were introduced in the new law, raise serious due process concerns.

More fundamentally, the new laws were enacted without the kind of comprehensive public consultation, committee scrutiny, and legislative debate that legislation of this constitutional significance required. The Select Committee process was abbreviated. The legal community was not meaningfully consulted. State governments, to whom criminal procedure is a matter of concurrent legislative authority and whose police forces would be most directly affected, had their concerns substantially ignored. The laws were passed with remarkable speed, a characteristic of major legislation in the current parliamentary environment that reflects the decline of parliamentary deliberation documented in Chapter Three of this part.

The constitutional historian Rohit De has noted that the colonial laws being replaced were not simply oppressive instruments: some of them, particularly the Indian Evidence Act, contained significant protections for accused persons that had been developed through a century of common law adjudication and that, whatever their colonial origin, served important rights-protective functions. The replacement of these laws with new instruments of uncertain interpretation, without adequate institutional preparation of the legal community, created substantial uncertainty in the administration of criminal justice. The irony that a process presented as decolonization actually reproduced and in some respects strengthened the colonial features of the criminal law while eliminating some of its rights-protective elements is, from the perspective of constitutional analysis, one of the most striking features of the current constitutional moment.

5.4 The Information and Communications Surveillance State: Digital Colonialism

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The colonial state was a surveillance state by the standards of its era: it maintained networks of informants, intercepted correspondence, monitored political meetings, and assembled files on individuals deemed potentially troublesome to imperial authority. The Indian state inherited this surveillance apparatus and, in the era of digital communications, has vastly expanded it.

The legal framework for electronic surveillance in India is remarkably permissive from a constitutional standpoint. The Indian Telegraph Act of 1885 authorizes the interception of communications "on the occurrence of any public emergency, or in the interest of the public safety." The Information Technology Act of 2000 authorizes the monitoring of computer and internet communications on grounds including "sovereignty or integrity of India, defense of India, security of the State, friendly relations with foreign states, public order" or to prevent the instigation of cognizable offenses. The breadth of these authorizations, which extends to virtually any situation that the executive defines as relevant to any of these grounds, creates a legal framework for mass surveillance that is constitutionally incompatible with the right to privacy recognized in the Puttaswamy judgment.

The Puttaswamy judgment of 2017, in which all nine judges of a Supreme Court bench unanimously held that privacy is a fundamental right under Article 21, was a landmark constitutional development. The judgment held that any interference with privacy must satisfy the tests of legality (it must be authorized by law), necessity (it must be necessary to achieve a legitimate state objective), and proportionality (the means employed must be proportionate to the objective). Applied to the existing electronic surveillance framework, this test would, if rigorously applied, require a fundamental restructuring of the legal basis for government surveillance.

But the Puttaswamy judgment has not been operationalized through legislation that would give content to its privacy guarantee. The Data Protection Bill that was intended to implement Puttaswamy's privacy mandate went through multiple drafts and was ultimately enacted as the Digital Personal Data Protection Act (DPDPA) of 2023. The DPDP Rules of 2025 operationalized data protection Usthadian to some degree. But critics, including former members of the Justice Srikrishna Committee that recommended the original data protection framework, have argued that the DPDPA is significantly weaker than what is needed to give constitutional substance to the right to privacy, particularly in its provisions for government exemptions from data protection requirements, which are so broad as to effectively exclude the state itself from the privacy framework that is supposed to constrain its surveillance activities.

The Pegasus controversy of 2021 remains unresolved in both political and constitutional terms. The Supreme Court's technical committee, which was established to investigate the use of Pegasus spyware against Indian citizens, produced a report that the Court has not released in full and whose findings about government use of the spyware were inconclusive. The government declined to cooperate with the committee's investigation, invoking national security. The constitutional framework that should have enabled a definitive, transparent, and accountable investigation of what appears to have been a significant violation of the fundamental right to privacy was, in practice, insufficient to compel that investigation.

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The pattern of digital surveillance, data collection without consent, and the use of digital infrastructure for the exercise of social control (including the Aadhaar identity system, which has been used as a condition of access to welfare entitlements in ways that critics argue exclude the most vulnerable, the linking of Aadhaar to SIM cards and financial accounts, and the proposal for a facial recognition-based national surveillance infrastructure) constitutes what the critical technology scholars have called a "digital colonialism": a new manifestation of the colonial state's surveillance imperative, made vastly more powerful and more pervasive by the technologies of the twenty-first century, operating within a constitutional and legal framework that has not adequately adapted to the constitutional implications of digital surveillance.

CHAPTER SIX: INDIA AND ITS NEIGHBORS: CONSTITUTIONAL MYOPIA AND REGIONAL DISORDER

6.1 The Constitutional Structure of Foreign Policy and Its Democratic Failure

As noted in Part One and revisited briefly in earlier parts of this textbook, the Indian Constitution's approach to foreign policy is characterized by extreme concentration in the executive, minimal legislative accountability, and virtually no framework for the integration of democratic deliberation into the making of major foreign policy decisions. This constitutional structure has consequences that extend beyond the domain of foreign policy proper: it shapes India's regional relationships in ways that have direct consequences for the lives of millions of people both within and beyond India's borders.

The executive monopoly on foreign policy is defended, in constitutional theory and practice, on the grounds of national security, diplomatic confidentiality, and the technical complexity of international negotiations. These are genuine concerns. Foreign policy cannot be conducted in the manner of a town hall meeting, and there are legitimate reasons why negotiating positions must sometimes be held confidential. But the defense of executive monopoly on these grounds proves too much: it would justify excluding democratic accountability from virtually any domain that the executive chooses to characterize as relevant to national security.

The more defensible constitutional position is that executive discretion in foreign policy must be balanced against legislative accountability, that Parliament should have a meaningful role in the scrutiny of treaty obligations and major foreign policy commitments, and that citizens should have access to sufficient information about the government's foreign policy positions to enable meaningful democratic deliberation. None of these requirements is currently satisfied by the Indian constitutional framework.

The consequences of democratic failure in foreign policy are not abstract. They include the following: strategic commitments that serve elite interests rather than national interests, because the elites who dominate the foreign policy establishment have interests that may diverge significantly from those of the majority of Indian citizens; the use of foreign policy as a domestic political instrument, with consequential distortions of strategic priorities; the failure to develop genuine cooperative relationships with neighboring countries because domestic political

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incentives consistently favor nationalist posturing over substantive engagement; and the inability of affected communities in border areas to have their specific interests reflected in the foreign policy decisions that most directly affect them.

6.2 The Pakistan Problem: Constitutional Rigidity and the Price of Unresolved Conflict

The India-Pakistan conflict is, at its root, a constitutional conflict: it arose from the constitutional moment of 1947, the partition, and the contested accession of Jammu and Kashmir to India. Its continuation over more than seven decades is, in significant part, a consequence of constitutional rigidities on both sides that make compromise constitutionally difficult or impossible.

From the Indian constitutional perspective, the Kashmir question is constitutionally closed. Kashmir is an integral part of India under Article 1, and no Indian government can, consistent with the constitutional framework as currently interpreted, acknowledge Pakistan's claim to any part of the territory of Jammu and Kashmir or negotiate a settlement that would involve the transfer of any portion of that territory to Pakistan. The Supreme Court itself, in the abrogation of Article 370 case decided in December 2023, upheld the constitutional validity of the abrogation and the reorganization of J&K into two Union Territories, reinforcing the constitutionally entrenched character of the Indian government's position.

The constitutional entrenchment of India's position on Kashmir is not merely a legal formality: it has real consequences for the possibility of bilateral settlement, for the security environment of the subcontinent, for the civilian populations of J&K and of Pakistan-administered Kashmir who have lived with the consequences of the unresolved conflict for more than seven decades, and for the entire regional architecture of South Asia.

The argument that constitutional entrenchment of territorial claims serves the national interest is not self-evidently wrong. A state that can negotiate away its constitutional territory at the discretion of the executive may face serious risks of coercion or bad bargaining. But the constitutional framework that makes any compromise literally unconstitutional eliminates the possibility of the kind of creative diplomatic flexibility that has resolved other protracted territorial disputes. The resolution of the Indo-Pakistani border question in specific sectors through the Shimla Agreement of 1972 did not require constitutional amendment because it did not involve the formal cession of territory. But a more comprehensive settlement that involved the recognition of the Line of Control as a final international boundary, for example, would raise constitutional questions about Article 1 that would require either a constitutional amendment or creative constitutional interpretation.

The Indo-Pakistan conflict has had consequences for the constitutional order itself that are rarely acknowledged in mainstream Indian constitutional discourse. The national security state that the conflict has justified and sustained has provided the constitutional rationale for emergency powers, preventive detention legislation, restrictions on free speech, and the militarization of governance in border areas that have been used far beyond the specific security contexts that nominally justified them. The argument that "national security" requires the restriction of rights that would otherwise be guaranteed, an argument used by the state against civil liberties defenders in contexts ranging from Kashmir to the Maoist insurgency to the Bhima Koregaon

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case, draws its constitutional legitimacy in part from the genuine security challenges that India faces. But it also draws on a constitutional culture of security exceptionalism that the conflict with Pakistan helped to entrench.

6.3 China, Border Disputes, and the Limits of Constitutional Nationalism

India's relationship with China presents a different but equally revealing constitutional challenge. The Galwan Valley conflict of June 2020, in which Indian and Chinese soldiers engaged in a bloody melee along the Line of Actual Control in eastern Ladakh that resulted in the deaths of 20 Indian soldiers and an unknown number of Chinese soldiers, represented the most significant military confrontation between India and China since the 1962 border war. The government's handling of the Galwan conflict, and of the border standoff that preceded and followed it, has been the subject of extensive public and parliamentary controversy.

The constitutional dimension of the controversy is the question of accountability: in a democratic constitutional system, what obligation does the government have to provide Parliament, and through Parliament the public, with accurate and timely information about a military confrontation that resulted in the loss of soldiers' lives? The government's initial denial that any territorial incursion had occurred, its subsequent reluctant acknowledgment of the deaths (whose number the government confirmed only under pressure), and its characterization of the situation as one in which India had given a strong response, have been contradicted by multiple sources, including satellite imagery and subsequent statements by Indian military officials, that suggested significant Chinese advances along the LAC in Ladakh that have not been fully reversed.

The constitutional principle at stake is the principle of parliamentary accountability for executive decisions, including executive decisions on military and foreign policy matters. In most parliamentary democracies, a government whose military is engaged in a significant confrontation with a foreign power is expected to provide Parliament with factual information about what has occurred, to allow parliamentary scrutiny of the government's response, and to be held accountable for any decision-making failures that contributed to the confrontation. In India, the parliamentary accountability for the Galwan confrontation has been minimal: parliamentary questions have been answered evasively, the opposition's demands for a more detailed accounting have been dismissed, and the information available to Parliament and the public about what actually happened in Galwan and its aftermath remains incomplete.

The deeper constitutional issue is the democratic deficit in Indian strategic decision-making. The decisions about border management, military posture, and diplomatic engagement with China that contributed to the conditions for the Galwan confrontation were made by the executive without meaningful parliamentary oversight or public deliberation. The constitutional framework that concentrates foreign and defense policy decision-making entirely within the executive, without adequate mechanisms for legislative scrutiny or public accountability, creates conditions in which strategic failures can occur without the accountability that might create incentives for better decision-making.

6.4 The Neighborhood Policy: Constitutional Values and the Reality of Coercive Regionalism

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India's relationships with its smaller and weaker neighbors, Bangladesh, Nepal, Sri Lanka, Bhutan, and Myanmar, reveal a consistent and constitutionally significant pattern: the use of India's size, economic weight, and strategic position as instruments of pressure rather than partnership. This pattern is not reducible to the policy choices of any individual government: it is embedded in the structure of Indian foreign policy as it has been practiced across different governments and different eras.

The 2015 economic blockade of Nepal, which India maintained for several months in response to Nepal's adoption of a new constitution, represents perhaps the most extreme example of this coercive regionalism. The blockade, which India denied officially while tacitly endorsing by preventing trucks carrying fuel and other essential goods from crossing the border, was imposed at a time when Nepal was still recovering from the devastating April 2015 earthquake that killed nearly 9,000 people. The constitutional objection that India raised to Nepal's new constitution, relating to the provisions on federalism and the political status of the Madhesi plains communities, may have been a legitimate concern. But the use of economic pressure amounting to collective punishment of the Nepalese population, which caused severe shortages of fuel, medicines, and other essential goods, was constitutionally indefensible as an instrument of foreign policy for a state that declares itself committed to international peace and the rule of law in Article 51 of its own Constitution.

The constitutional framework provides no mechanism for holding the Indian government accountable for the consequences of its foreign policy choices for the populations of neighboring countries. There is no domestic legal remedy available to a Nepalese or Bangladeshi citizen harmed by Indian foreign policy. There is no constitutional requirement that the government consider the human rights implications of its foreign policy decisions. There is no parliamentary forum in which the humanitarian consequences of Indian foreign policy choices are seriously examined.

This constitutional vacuum is not merely a technical legal deficiency. It reflects a conception of India's role in the region that is fundamentally imperial in its assumptions: that India's size and power justify the use of coercive economic and political instruments against smaller neighbors in the pursuit of Indian strategic interests, and that the human consequences for the populations of those neighbors are not relevant to the constitutional accountability of the Indian state.

The argument for a genuinely reformist constitutional approach to regional relations is not merely moral: it is strategic. The pattern of Indian coercive regionalism has consistently generated anti-Indian sentiment in neighboring countries, pushed them toward closer relationships with China (which offers an alternative patron without India's accompanying paternalism), and reduced India's capacity for the kind of soft power and regional leadership that its size and cultural heritage could support. A regional policy that genuinely reflected the constitutional values of equality, human rights, and international peace would be not only more constitutionally honest but strategically superior.

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CHAPTER SEVEN: JURISPRUDENTIAL AND PHILOSOPHICAL FRAMEWORKS FOR CONSTITUTIONAL RECONSTRUCTION

7.1 Postcolonial Constitutionalism: Theory and Method

The theoretical framework most directly applicable to the Indian constitutional predicament is postcolonial constitutionalism: a field of constitutional theory that has developed over the past three decades in dialogue with both the traditions of critical legal studies and the specific political and historical contexts of formerly colonized societies. Postcolonial constitutionalism begins with the recognition that the standard categories of Western constitutional theory, sovereignty, rights, the rule of law, democratic representation, are not neutral analytical tools but historically situated products of specific political contexts in which colonialism played a constitutive role.

The foundational insight of postcolonial constitutional theory, articulated by scholars including Upendra Baxi, Boaventura de Sousa Santos, Makau Mutua, and Obiora Chinedu Okafor, is that the constitutional orders of formerly colonized societies are sites of multiple, often conflicting legacies: the legacy of the colonial legal system, the legacy of pre-colonial governance traditions, the legacy of the independence movement's political vision, and the ongoing legacy of imperial economic and political relationships that formal independence did not end. A constitution that does not consciously and explicitly reckon with these multiple legacies, that adopts the frameworks of the colonial legal system without subjecting them to critical examination, will replicate colonial relationships of power within a nominally independent state.

This insight has direct application to the Indian Constitution. As the analysis throughout this textbook has demonstrated, the Indian Constitution has done exactly what postcolonial constitutional theory warns against: it has replicated the structural frameworks of colonial administration within a nominally democratic constitutional order, clothing them in the language of rights and representation while preserving their essential functions of control and extraction. The result is what Upendra Baxi has called "epistemic colonialism in constitutional law": a state of affairs in which the concepts, categories, and procedures of colonial law govern the constitutional imagination, excluding the possibility of genuinely post-colonial alternatives.

The practical implications of postcolonial constitutional theory for the reform of the Indian Constitution are significant. They suggest that a genuinely post-colonial constitutional reconstruction would need to do more than amend specific provisions or replace individual institutions. It would need to rethink the fundamental constitutional categories through which Indian governance is organized: the relationship between the state and the citizen, the organization of political representation, the distribution of economic rights and resources, the governance of land and natural resources, and the framework for the recognition of India's extraordinary cultural and social diversity.

7.2 Rawlsian Justice and the Constitutional Test of the Original Position

John Rawls's theory of justice as fairness, developed in "A Theory of Justice" (1971) and "Political Liberalism" (1993), provides a powerful philosophical framework for evaluating the

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justice of constitutional arrangements. The central thought experiment of Rawlsian theory, the "original position" behind a "veil of ignorance," asks us to evaluate constitutional principles from the perspective of persons who do not know their place in the social order: their class position, their caste, their religion, their gender, their regional origin, and their natural talents and endowments.

Applied to the Indian Constitution, the Rawlsian test reveals a constitutional order that would not be chosen by persons reasoning from behind a veil of ignorance. A person who did not know whether she would be born a wealthy, upper-caste, English-speaking urban professional or a landless dalit agricultural laborer in rural Bihar, and who was reasoning about the constitutional principles that should govern the society into which she would be born, would not choose a constitutional order that:

Places the most resource-intensive social obligations (education, health, public order) at the level of government (the states) that has least access to financial resources. Designs fundamental rights enforcement mechanisms (Supreme Court and High Court writ jurisdiction) whose costs are prohibitive for the majority of citizens. Creates a labor law framework that systematically excludes 90 percent of the workforce from its protections. Authorizes preventive detention and restricts free speech through provisions that have been used predominantly against the poor and the powerless. Concentrates political power in the hands of parties that can win parliamentary majorities with minority popular support. Designs a federal structure that gives the Centre unlimited capacity to override state autonomy in ways that benefit the political interests of the party that controls the Centre.

The Rawlsian analysis is particularly powerful when applied to the social and economic dimensions of the constitutional order. Rawls's difference principle holds that social and economic inequalities are just only if they are arranged to be of the greatest benefit to the least advantaged members of society. The Indian constitutional order, which has presided over a pattern of economic growth that has been described by economists including Lucas Chancel and Thomas Piketty as among the most inequality-increasing of any major economy in recent decades, fails this test decisively. The benefits of India's economic growth have been concentrated among the upper and middle classes, while the constitutional promises of social and economic justice for the least advantaged have gone substantially unfulfilled.

7.3 Republicanism, Domination, and the Constitutional Theory of Non-Domination

Philip Pettit's neo-republican theory of political freedom, developed in "Republicanism: A Theory of Freedom and Government" (1997) and "On the People's Terms" (2012), offers a constitutional theory centered on the concept of non-domination rather than non-interference. In Pettit's framework, a person is free in the relevant sense when she lives in conditions where no other person or institution has the arbitrary power to interfere with her choices. Non-domination is not merely the absence of actual interference: it is the structural absence of the capacity for arbitrary interference.

Applied to the Indian constitutional order, the republican theory of non-domination reveals a system in which the majority of citizens are, in the relevant sense, dominated: they live in

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conditions where the state, through the police, through land acquisition powers, through surveillance capabilities, through the deployment of criminal law, through fiscal dependence, and through a host of other mechanisms, has the arbitrary power to interfere with their choices in ways that are not adequately checked by constitutional constraints.

The domination by the state is compounded by domination by private actors whose exercise of power over others is not adequately addressed by the constitutional framework. The dalit agricultural laborer in a village where the landlord controls both the land and the local police, the woman in a family where domestic violence is socially condoned and legally under-prosecuted, the adivasi community facing a mining company that has acquired the relevant government approvals, the informal sector worker in a factory where labor law is unenforced: these are all cases of domination by private actors that the constitutional framework, with its primary focus on state action and its relative neglect of private power relations, addresses inadequately.

Pettit's republican constitutional theory suggests that a constitution genuinely committed to freedom would need to design institutions specifically to address both state domination and private domination: to create not merely formal rights against state interference but structural conditions that eliminate or minimize the capacity of any actor, whether state or private, to exercise arbitrary power over others. This would require, among other things, genuinely independent courts accessible to all, strong anti-monopoly regulation, robust labor protection covering all workers, land reform that addresses the concentration of land ownership, and media regulation that prevents the concentration of information power in the hands of those with aligned political interests.

7.4 Ambedkarite Democratic Theory and the Constitutional Requirements of Social Democracy

Ambedkar's constitutional thought is the most profound and most systematically neglected resource for Indian constitutional reconstruction. Ambedkar's democracy was not merely electoral democracy: it was what he called "social democracy," a system in which the formal structures of political democracy are grounded in a social order characterized by liberty, equality, and fraternity in the full social and economic sense of those terms.

In his famous speech to the Constituent Assembly on November 25, 1949, the day before the Constitution was adopted, Ambedkar warned that political democracy, however formally complete, would be meaningless without social democracy: "On the 26th of January 1950, we are going to enter into a life of contradictions. In politics we will have equality and in social and economic life we will have inequality. In politics we will be recognizing the principle of one man one vote and one vote one value. In our social and economic life, we shall, by reason of our social and economic structure, continue to deny the principle of one man one value. How long shall we continue to live this life of contradictions?"

Ambedkar's question, posed more than seven decades ago, has been answered by the experience of those seven decades: we have continued to live this life of contradictions far longer than he or anyone else hoped or expected. The constitutional framework that was supposed to initiate the resolution of those contradictions has instead presided over their perpetuation, because the

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formal political equality that the Constitution provides has not been accompanied by the social and economic transformation that Ambedkar identified as its necessary foundation.

Ambedkar's constitutional theory implies several specific requirements for a genuinely democratic constitutional order. First, the rights of the most marginalized, including dalits, adivasis, women, and other historically oppressed groups, must be not merely formally guaranteed but materially enforceable through institutions designed specifically to protect those rights against the power of dominant social groups. Second, the economic constitution of the state must address the concentration of wealth and the unequal distribution of productive resources, not merely as a directive principle aspiration but as a justiciable constitutional obligation. Third, the political constitution must prevent the capture of democratic institutions by organized religious and caste power, through robust anti-discrimination provisions, through institutional design that ensures the representation of marginalized communities, and through constitutional prohibitions on the use of religious and caste identity as instruments of political mobilization.

The 2026 assessment by the academic research paper cited in this part's research notes, published in the Asian Studies Review, which examines India's democratic backsliding through a sociocultural lens and identifies the framing of the Constitution, the Emergency period, and the rise of Hindu nationalism as key historical developments in the pattern of illiberal, communal, and majoritarian tendencies, essentially maps the territory that Ambedkar identified in 1949: the survival of social hierarchy and its capacity to undermine the formal achievements of political democracy.

CHAPTER EIGHT: THE CONSTITUTIONAL ARCHITECTURE OF SOCIETAL HARM: A HOLISTIC ANALYSIS

8.1 Mapping the Victimization of Indian Citizens Through Constitutional Design

This chapter attempts something unusual in a work of constitutional analysis: a systematic mapping of how specific constitutional design features translate into specific forms of harm experienced by specific categories of citizens. The purpose is not merely analytical but moral and political: to make visible the connection between abstract constitutional provisions and the concrete lived suffering of human beings, so that the necessity of constitutional reform is understood not as an academic preference but as a moral imperative.

The categories of citizens most systematically victimized by the constitutional order are identifiable with some precision, and they correspond, with grim predictability, to the categories of citizens who were least represented in the Constituent Assembly and whose interests carried least weight in its deliberations. They are: the rural and urban poor, who constitute the majority of the Indian population; scheduled caste and scheduled tribe communities, who face the accumulated disadvantages of historical oppression and continuing discrimination; women, whose constitutional equality before the law coexists with pervasive social, economic, and political inequality; religious minorities, particularly Muslims, who face increasing constitutional

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marginalization in the era of Hindu nationalism; informal sector workers, who are structurally excluded from the protections of labor law; and the residents of India's border regions, who live with the perpetual insecurity generated by India's unresolved territorial conflicts and the constitutional framework's failure to develop peaceful cooperative relationships with neighboring states.

For each of these categories, the constitutional design features that produce harm are identifiable.

The rural and urban poor are harmed by the non-justiciability of social and economic rights, by the inadequacy of the legal aid system, by the land acquisition framework's inadequate protection of occupancy rights, by the preventive detention provisions that enable their criminalization for peaceful political activity, by the police legal framework that enables custodial abuse, and by the fiscal federalism design that underfunds the social services (education, health, local infrastructure) on which they most depend.

Scheduled caste and scheduled tribe communities are harmed by the inadequate enforcement of the Atrocities Act, by the police force's institutional bias, by the Forest Rights Act's incomplete implementation, by the land acquisition framework's disproportionate impact on tribal communities, by the reservation system's failure to adequately address private sector discrimination, and by the constitutional framework's inadequate protection against displacement.

Women are harmed by the persistence of discriminatory personal laws that the Constitution's directive to achieve a uniform civil code has not been implemented, by the inadequate criminalization and prosecution of domestic violence and sexual assault, by the Supreme Court's inconsistent and sometimes regressive jurisprudence on women's rights, by the workplace discrimination that labor law does not adequately address, and by the constitutional framework's failure to require equal representation of women in Parliament and state legislatures.

Religious minorities, particularly Muslims, are harmed by the Citizenship Amendment Act's differential treatment of citizenship applications, by the NRC process's disproportionate impact on poor Muslim communities in border areas, by anti-conversion laws that target conversions from Hinduism while leaving conversions to Hinduism unregulated, by the pattern of mob violence against Muslims and their economic interests that the state has inadequately prosecuted, and by the systematic targeting of Muslim individuals and institutions through the deployment of criminal law and administrative power.

8.2 Corruption as a Constitutional Problem

Corruption in India is typically discussed as an implementation problem: a failure of governance that occurs because officials abuse the discretion the law gives them, because the culture of accountability is weak, because criminal justice for corruption is slow and uncertain. This analysis is not wrong, but it is incomplete. Corruption in India is also, in important respects, a constitutional problem: a predictable consequence of specific constitutional design features that create systematic incentives and opportunities for corrupt behavior.

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The concentration of discretionary power in the bureaucratic and political executive, without adequate mechanisms of accountability and transparency, creates the conditions for corruption. The constitutional design that places the most important regulatory functions (land use, natural resource management, industrial licensing, infrastructure development) in the hands of discretionary executive decision-makers, subject to weak institutional accountability, is a design that generates corruption not as an aberration but as a predictable systemic outcome.

The Supreme Court's observation that India's anti-corruption framework represents a fundamental constitutional and governance failure is well-founded. The absence of an independent, constitutionally-protected anti-corruption institution that can investigate and prosecute corruption in the political and executive class without being subject to the direction of the very political executive it is supposed to investigate, a gap that the Lokpal and Lokayuktas Act of 2013 has not adequately filled, is a constitutional design failure of the first order.

The electoral financing system, until the Supreme Court's 2024 judgment striking down the electoral bonds scheme, provided a mechanism for corporations to make large, anonymous donations to political parties in exchange for which they could reasonably expect regulatory and policy favors. This was a constitutionally-enabled system of institutionalized corruption: corruption built not into individual decisions but into the financing structure of the political system itself. The Supreme Court's judgment in Association for Democratic Reforms v. Union of India (2024), which struck down the electoral bonds scheme as unconstitutional, was a landmark decision, but it addressed only one mechanism of systematic constitutional corruption. The broader architecture of corruption-enabling constitutional design remains intact.

The relationship between corruption and constitutional design is most clearly visible in the domain of land and natural resource governance. The allocation of mineral extraction rights, the approval of forest diversion for industrial projects, the acquisition of agricultural land for industrial and commercial development, these are all processes in which enormous private wealth can be created or destroyed by discretionary government decisions. In a constitutional framework that places these decisions in the hands of executive officials with weak accountability and high discretion, and in which the individuals who control the political executive have incentives to extract rents from those who seek favorable decisions, corruption is not an exception but a structural feature.

8.3 The Media, Information, and Constitutional Democracy

The health of constitutional democracy depends on the availability of accurate, independent information to citizens. Citizens can only hold their governments accountable if they know what their governments are doing. Elections can only function as accountability mechanisms if voters have access to truthful information about the performance of incumbents and the proposals of challengers. The constitutional guarantee of freedom of speech and expression under Article 19(1)(a), which the Supreme Court has interpreted to include the freedom of the press, is the constitutional foundation of this democratic information requirement.

The Indian media landscape of 2024-2026 is, by most independent assessments, one characterized by increasing concentration of ownership, increasing self-censorship in the face of

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political and commercial pressure, declining investigative reporting, and the rise of social media-based disinformation ecosystems that systematically mislead large portions of the population. India's ranking in the Reporters Without Borders Press Freedom Index has declined significantly over the past decade, reaching a position that places it among the countries where press freedom is described as "difficult." The Committee to Protect Journalists has documented multiple cases of harassment, arrest, and violence against journalists, particularly those reporting on Kashmir, on the activities of the security forces, and on religious violence.

The constitutional dimensions of the media crisis are multiple. The concentration of media ownership in the hands of corporations with significant business interests in maintaining favorable relationships with the government creates structural conflicts of interest that undermine editorial independence. The use of sedition and UAPA provisions against journalists for their reporting creates a chilling effect on investigative journalism. The government's control of the information environment through the selective briefing of favored media outlets, the use of advertising revenues as a tool of political pressure, and the deployment of organized social media campaigns to attack critical journalists, creates conditions in which genuine freedom of the press is constrained not through formal legal censorship but through the exercise of informal political and economic power.

These problems are not fully addressed by the existing constitutional framework. Article 19(1)(a) guarantees freedom of expression but does not establish institutional protections for media independence, does not regulate media ownership concentration, does not protect journalists from retaliation by non-state actors, and does not create any positive obligation on the state to maintain the conditions in which independent journalism can flourish. A genuinely reformed constitutional order would need to address these gaps.

CHAPTER NINE: THE CASE FOR CONSTITUTIONAL RECONSTRUCTION: ARGUMENTS, MODELS, AND PATHWAYS

9.1 Beyond Amendment: The Argument for a New Constitutional Founding

The argument of this textbook has arrived, through the analysis of preceding parts and the chapters of this final part, at a conclusion that may seem radical but is, on careful constitutional analysis, both defensible and necessary: the Constitution of India requires not merely amendment but fundamental reconstruction. The accumulated failures of the constitutional order, its colonial inheritance, its anti-federal design, its inadequate rights protection, its concentration of executive power, its failure to protect the poor and the marginalized, its complicity in the nationalist turn, and its dysfunctional approach to regional relations, are not problems that can be adequately addressed through the amendment process that Article 368 provides.

The argument against fundamental reconstruction typically takes three forms. The first is the argument from constitutional stability: that the risks of constitutional instability associated with a fundamental founding process are too great to be justified by the potential gains of reconstruction. This argument has historical force: the founding moments of new constitutional

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orders are often accompanied by significant instability, and the history of constitution-making in formerly colonized societies includes many cautionary examples of constitutional processes that were captured by powerful interests and that produced outcomes worse than those they replaced.

But the argument from constitutional stability must be assessed against the stability costs of the current order. A constitutional order that has presided over seventy-five years of deepening inequality, persistent caste violence, democratic backsliding, inadequate protection of minority rights, and the failure to deliver on the basic promises of social and economic justice is not a stable constitutional order in the meaningful sense. It is a constitutional order that maintains the formal appearance of stability while generating deep and growing substantive instability: the instability of frustrated aspirations, accumulated grievances, systemic injustice, and the democratic deficit that has enabled the authoritarian turn.

The second argument against reconstruction is the argument from the basic structure: that the Supreme Court's basic structure doctrine protects certain constitutional essentials and that a new constitution, if it maintained these essentials, would be largely the same as the existing document with its defects addressed through amendment. This argument misunderstands both the basic structure doctrine and the case for reconstruction. The basic structure doctrine was developed as a defense against specific constitutional changes that the Court identified as destructive of constitutional democracy. It was never intended to prevent the democratic reconstruction of the entire constitutional order by a genuinely constituent assembly representing the full diversity of the Indian people.

The third argument is the argument from constitutional capture: that any new constitutional founding process would be captured by the political forces currently in power and would produce a constitutional order even more majoritarian, nationalist, and anti-democratic than the current one. This is a serious concern, and it is one that must inform the design of any constitutional reconstruction process.

9.2 The Bibek Debroy Proposal and Its Limits

The proposal by Bibek Debroy, a member of the Prime Minister's Economic Advisory Council, that India needs a new constitution drafted from first principles rather than further amendment of the existing document, attracted considerable attention in 2024 when it was articulated in a policy paper. Debroy's argument was that the existing Constitution is too rooted in a 1950s understanding of governance, too statist in its economic provisions, too distant from current democratic requirements, and too colonial in its administrative assumptions to be adequate to the India of the twenty-first century.

The response from constitutional scholars, civil society organizations, and opposition politicians was largely critical. The concern was that a new constitutional founding process in the current political environment would be dominated by the ruling BJP and its ideological parent the RSS, would likely result in the formal constitutionalization of Hindu nationalist principles, the weakening or elimination of minority rights protections, the replacement of genuine federalism with even more centralized governance, and the formal subordination of the judiciary to the executive.

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These concerns are legitimate and important. The procedural and political design of a constitutional founding process is as important as the substantive constitutional principles it is intended to embody. A new constitutional founding that is not genuinely inclusive, that does not involve adequate representation of minorities, women, dalits, adivasis, and other marginalized communities, that is not preceded by adequate civic education and public deliberation, and that is not protected against capture by majoritarian political forces, could indeed produce a constitutional order worse than the existing one.

But the legitimate concerns about the process and context of constitutional reconstruction do not constitute an argument that reconstruction is unnecessary. They constitute an argument for designing the process of reconstruction with the greatest possible care and with the greatest possible attention to procedural justice. The challenge is not whether to reconstruct but how.

9.3 Comparative Models of Constitutional Reconstruction

The experience of other countries in reconstructing constitutional orders that have failed their people provides valuable comparative material. Several models are particularly instructive for the Indian context.

The South African constitutional founding of 1993-1996 is perhaps the most widely admired example of a democratic constitutional reconstruction in the post-colonial context. The South African process was preceded by a negotiated political settlement, the Kempton Park negotiations that produced the Interim Constitution of 1993, which established the basic principles and procedural framework for the drafting of the final constitution. The Constitutional Assembly that drafted the 1996 Constitution was directly elected, was required to operate transparently and with extensive public participation, was subject to constitutional principle requirements certified by the Constitutional Court, and produced a document that has been widely recognized as one of the most progressive and comprehensive constitutions in the world.

The South African model is instructive not because it is directly transferable to the Indian context, which is in many respects radically different, but because it demonstrates that a genuinely democratic constitutional reconstruction can be achieved in a large, diverse, and politically divided society when the political conditions and the procedural design are adequate.

The Icelandic crowdsourced constitutional process of 2010-2013, in which a Constitutional Assembly of 25 randomly selected citizens drafted a new constitution through an online public participation process, offers a different but equally instructive model. The process was innovative in its use of social media and direct public engagement to incorporate diverse voices into the constitutional drafting, and the draft it produced was broadly progressive. However, it was ultimately not enacted because of parliamentary resistance.

Bolivia's constitutional reconstruction of 2006-2009, which produced a "plurinational" constitution recognizing the rights of indigenous peoples and nations, establishing multiple official languages, and restructuring the relationship between the state and indigenous communities, offers a model of constitutional reconstruction that specifically addresses the claims of historically excluded communities. The Bolivian experience has its own problems and

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contradictions, but it demonstrates that a constitution can be designed to do something that the Indian Constitution has not done: to structurally accommodate and recognize the diverse legal, cultural, and political traditions of a multi-ethnic society.

9.4 Principles for a New Indian Constitutional Order

Drawing on the analysis of the preceding chapters of this and the previous parts of this textbook, on the comparative constitutional literature, on the theoretical frameworks of postcolonial constitutionalism, Rawlsian justice, republican non-domination theory, and Ambedkarite social democracy, it is possible to identify a set of principles that should inform a genuinely reconstructed Indian constitutional order.

The first principle is genuine popular constituent power. A new constitutional order for India should be founded on a genuinely inclusive constituent process that represents the full diversity of the Indian people, with specific measures to ensure the adequate representation of women, scheduled caste and scheduled tribe communities, religious minorities, linguistic minorities, and the poor. The process should be preceded by extensive civic education and public deliberation, should operate transparently and with real opportunities for public participation, and should be designed to resist capture by any single political party or ideological tendency.

The second principle is substantive federalism. A new constitutional order should establish a genuinely federal structure in which the states have adequate financial autonomy to discharge their responsibilities, in which the Governor's office is either abolished or fundamentally reformed to eliminate its use as an instrument of central political control, in which the legislative powers of states cannot be easily overridden by the Centre, and in which there are robust constitutional mechanisms for the resolution of disputes between the Union and the states.

The third principle is justiciable social and economic rights. A new constitutional order should make social and economic rights justiciable, following the model of South Africa's Constitution (which makes rights to housing, healthcare, food, water, social security, and education justiciable subject to a "progressive realization" standard) and of recent constitutional developments in countries including Nepal, which has adopted a highly progressive social rights constitutional framework. The justiciability of social and economic rights would require the development of a new constitutional jurisprudence of positive rights, drawing on the experience of South African courts and of the Supreme Court of India's own Article 21 jurisprudence.

The fourth principle is effective democratic representation. A new constitutional order should address the failure of the first-past-the-post electoral system to produce legislative bodies that genuinely represent the diversity of voter preferences, through the adoption of a proportional or mixed-member proportional representation system. It should abolish or fundamentally reform the anti-defection law to restore genuine parliamentary accountability. It should require the internal democracy of political parties, including transparent financing and democratic candidate selection. It should establish constitutional mechanisms for the public financing of elections to reduce the influence of corporate money.

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The fifth principle is the rule of law and institutional independence. A new constitutional order should establish genuinely independent institutions for the appointment of the judiciary, the election commission, the audit and accountability bodies, and other constitutional watchdogs, through processes that are not controlled by the executive. It should establish a genuinely independent anti-corruption institution. It should reform the police through constitutional requirements of accountability, civilian oversight, and adherence to human rights standards. It should bring India's surveillance framework into conformity with the right to privacy through constitutional provisions that establish the substantive requirements for lawful surveillance.

The sixth principle is the protection of pluralism. A new constitutional order should establish stronger and more enforceable constitutional protections for religious minorities, linguistic minorities, and other cultural communities, building on the existing framework of Articles 25-30 but addressing the gaps and asymmetries that have been exploited to discriminate. It should establish a genuinely secular state, not in the sense of state hostility to religion but in the sense of equal constitutional treatment of all religious communities. It should address the constitutional dimensions of caste discrimination not merely through reservations but through positive obligations on the state to eliminate caste-based discrimination in all domains of public and private life.

The seventh principle is constitutional accountability for foreign policy. A new constitutional order should create mechanisms for parliamentary oversight of foreign policy, for the integration of international human rights obligations into domestic legal reasoning, and for the accountability of the Indian state for the consequences of its foreign policy choices on the populations of neighboring countries.

CHAPTER TEN: CONCLUSION: THE CIVILIZATIONAL STAKES AND THE DEMOCRATIC IMPERATIVE

10.1 The Accumulated Evidence of Constitutional Failure

The argument of this textbook, across five parts and numerous chapters, amounts to this: the Constitution of India, despite its remarkable formal achievements, has failed in its fundamental mission of delivering justice, liberty, equality, and fraternity to the people of India. This failure is not primarily a failure of implementation, although implementation failures are real and significant. It is primarily a failure of design: of constitutional architecture, of institutional structures, of the choices made in 1950 and maintained through subsequent amendments that consistently prioritized the interests of the colonial administrative state and its inheritors over the interests of the people.

The evidence assembled in this textbook supports this conclusion at multiple levels. At the level of historical analysis, the colonial inheritance of the Government of India Act 1935 embedded colonial assumptions of centralized control and administrative hierarchy into the constitutional framework in ways that have proven extraordinarily resistant to democratic reform. At the level of institutional analysis, the Governor's office, the emergency powers provisions, the anti-

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defection law, the preventive detention framework, and the concentration of executive power in the Prime Minister and PMO have all operated as instruments of the powerful against the less powerful rather than as protections of the citizen against the state. At the level of social analysis, the non-justiciability of social and economic rights, the inadequacy of the legal aid system, the failure to address caste-based discrimination in private life, and the pattern of development-induced dispossession, have systematically victimized the poor, the marginalized, and the excluded.

At the level of political analysis, the first-past-the-post electoral system, the constitutional silences on party democracy and electoral financing, the decline of parliamentary deliberation enabled by the combination of anti-defection law and executive dominance, and the democratic backsliding of the post-2014 period, have together produced a constitutional democracy that functions, in significant and growing respects, as an elected autocracy. While elections remain competitive and legislative procedures are generally regarded as free and fair, the study calls attention to several instances of executive manoeuvering and implementation of statutes that catalyze democratic backsliding, leading to India's downgrade from "Free" to "Partly Free" in 2020 and its continued placement in that category. The Wire

The V-Dem Democracy Report and Freedom House assessments document this slide with comparative rigor. The academic literature, from Tarunabh Khaitan's concept of "killing a constitution with a thousand cuts" to the 2025 study in the Asian Studies Review on the sociocultural components of democratic backsliding, provides the analytical framework for understanding how this process has occurred.

10.2 The Stakes for Indian Civilization

The stakes of constitutional failure and of constitutional reform in India are not merely political in the narrow sense. They are civilizational in the deepest and broadest sense of that word.

India is a civilization of extraordinary antiquity, depth, and vitality. It is a civilization that has survived millennia of conquest, disruption, and transformation and has emerged each time with its essential intellectual and cultural creativity intact. It is a civilization that has produced some of the most profound philosophical, mathematical, literary, and spiritual achievements in human history. It is a civilization that encompasses, within a single political territory, a diversity of languages, religions, cultures, and social forms that exceeds the diversity of the entire continent of Europe.

This civilization deserves a constitutional order worthy of it. It deserves a constitutional order that genuinely honors its diversity rather than seeking to reduce it to a single cultural identity. It deserves a constitutional order that genuinely delivers on the promises of equality and human dignity rather than maintaining them as rhetorical aspirations while perpetuating the structural inequalities of caste, class, and gender. It deserves a constitutional order that enables genuine democratic self-governance rather than periodic rituals of electoral legitimation of concentrated executive power. It deserves a constitutional order that makes India a genuinely cooperative and constructive presence in its region and in the world rather than a coercive hegemon that treats its neighbors as administrative problems to be managed.

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The argument that India cannot afford the disruption of fundamental constitutional reconstruction, that it must work with the constitution it has because the risks of change are too great, is ultimately an argument that the status quo, with all its injustices, is preferable to the uncertainty of genuine transformation. It is the argument that has been made, in every era and in every society, by those who benefit from the existing order against those who suffer under it. It is the argument against the abolition of slavery, against the extension of the franchise, against the independence of colonized peoples, against every significant democratic transformation in human history. It is always, in retrospect, the wrong argument.

The citizens of India, particularly those who are poorest, most marginalized, and most victimized by the current constitutional order, cannot afford the luxury of that argument. They have been waiting, for seventy-five years, for the constitutional promise of justice, liberty, equality, and fraternity to be kept. They cannot afford to wait for it to be kept through the slow accumulation of amendments and judicial interpretations to a document that was never genuinely designed for their liberation.

10.3 The Intellectual Tradition of Constitutional Critique and Its Renewal

This textbook stands in an intellectual tradition of constitutional critique that includes some of the most important thinkers in India's modern intellectual history. It stands in the tradition of Ambedkar, whose lifelong intellectual work was devoted to exposing the gap between constitutional promise and social reality and to developing the theoretical framework for genuine social democracy. It stands in the tradition of Jawaharlal Nehru, who despite his complicity in some of the constitutional choices this textbook criticizes, understood that the constitutional project was not completed at independence but was a continuing political responsibility. It stands in the tradition of the legal scholars, social scientists, journalists, and activists who have, across seven decades, documented the failures of the constitutional order with rigor and courage.

The renewal of this tradition of constitutional critique, in the conditions of the twenty-first century, requires the integration of that historical tradition with the most contemporary analytical tools: the comparative constitutional scholarship of the global North and South, the democratic theory literature on backsliding and autocratization, the postcolonial legal theory that situates the Indian constitutional predicament within the broader history of decolonization, and the empirical social science that documents, with increasing precision, the consequences of constitutional design choices for the welfare of citizens.

This textbook has attempted that integration. It is, inevitably, incomplete. Constitutional analysis at the level of depth and breadth that the Indian situation requires cannot be exhausted in five parts, much less in any single work. The argument presented here, for fundamental constitutional reconstruction grounded in the principles of genuine popular constituent power, substantive federalism, justiciable social and economic rights, effective democratic representation, the rule of law and institutional independence, the protection of pluralism, and constitutional accountability for foreign policy, is an argument that will need to be developed, contested, refined, and translated into specific constitutional proposals through a process of democratic deliberation that is itself part of the constitutional renewal it seeks.

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What this textbook is confident about is the diagnosis: the Constitution of India, in its current form and with its accumulated interpretive traditions, is not adequate to the constitutional needs of the Indian people. And what the tradition of constitutional criticism represented in this textbook insists on, with the conviction of seventy-five years of evidence, is the imperative of genuine reconstruction: not a timid incrementalism that leaves the fundamental architecture of colonial administration intact, but a courageous democratic act of constitutional self-determination through which the people of India claim the constitutional order they have always deserved.

The arguments against such an act are the arguments of those who benefit from the present arrangement. The arguments for it are the arguments of justice, history, and democratic self-governance. The choice, ultimately, belongs to the people of India, who are the sovereign from whom all constitutional authority derives and to whom it must, in a genuinely democratic constitutional order, genuinely be accountable.

CONCLUSION TO PART FIVE: THE WORK THAT REMAINS

Part Five has traveled a considerable distance from the constitutional provisions and doctrinal frameworks that form the primary subject matter of conventional constitutional scholarship. It has moved from the specific mechanisms of citizen victimization through the constitutional order, through the political analysis of power concentration and democratic decay, through the international dimensions of constitutional failure, through the jurisprudential and philosophical frameworks for reconstruction, to the civilizational stakes of the argument as a whole.

The central argument, stated in its simplest form, is this: the Indian Constitution has failed, not completely and not irreparably, but structurally and systematically, in its core mission of delivering justice to all its citizens. The failure is rooted in colonial inheritance, in the class interests of the constitutional framers, in the institutional logic of an administrative state designed for control rather than liberation, and in the political dynamics of a democratic system whose design consistently advantages the powerful over the powerless.

The response to this failure cannot be the incremental amendment of specific provisions. It must be, and with increasing urgency as the authoritarian momentum of the current constitutional moment gathers force, a fundamental rethinking of the constitutional framework within which Indian governance operates. That rethinking must be grounded in the principles of genuine popular democracy, substantive equality, institutional independence, social and economic justice, pluralism, and peaceful cooperative engagement with the world.

Part Six of this textbook will examine, in detail, the specific constitutional provisions that require reconstruction, the procedural framework for a new constitutional founding, and the political conditions under which genuine constitutional reconstruction becomes possible. It will also examine the history of constitutional reform movements in India, from the constituent assembly debates to the various Law Commission reports on constitutional reform, to the contemporary

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civil society advocacy for constitutional change, to understand what has been attempted, what has been achieved, and what remains to be done.

The path from the constitutional failure documented in this part to the constitutional reconstruction advocated in it is long and uncertain. But the work of constitutional renewal begins with the work of constitutional understanding: the rigorous, honest, and courageous examination of the gap between constitutional promise and constitutional reality that this textbook has attempted to provide. That examination, if it has been honest, is itself a contribution to the democratic project of constitutional reconstruction.

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End of Part Five

Note on Part Six: Part Six will proceed to examine, in the same depth and with the same combination of jurisprudential, philosophical, historical, and political analytical tools, the specific proposals for constitutional reconstruction: chapter-by-chapter analysis of the provisions most in need of reform, the comparative constitutional models that offer guidance for each proposed change, the political economy of constitutional reform and the conditions under which it becomes achievable, and the movements of democratic constitutional renewal that represent the living force of India's continuing struggle for genuine constitutional justice.

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PART SIX: THE ARCHITECTURE OF RECONSTRUCTION

Provisions, Proposals, and the Political Economy of Constitutional Change

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PREFACE TO PART SIX

Part Five of this textbook closed with a declaration of the civilizational stakes involved in the failure of the Indian constitutional order and with the articulation of a set of principles that should guide any genuine reconstruction of that order. The declaration was grounded in seventy-five years of accumulated evidence, in the comparative constitutional literature, in the jurisprudential traditions of postcolonial legal theory, and in the philosophical frameworks developed by Ambedkar, Rawls, Pettit, Dworkin, and the scholars of the Critical Legal Studies movement who have illuminated the relationship between formal legal structures and the distribution of social power.

Part Six descends from the level of principle to the level of detail. It does so not because detail is more important than principle, but because the argument for constitutional reconstruction, if it is to be an argument that can actually be used in the political and legal struggles of the present moment, must be capable of being cashed out in specific terms. It must be able to say, about each provision of the Constitution that requires reform, precisely what is wrong with it, why it has failed, what the comparative alternatives are, what theory of constitutional design supports the proposed change, and what the political and institutional obstacles to achieving that change actually are.

This is the work of Part Six. It proceeds through ten chapters that together constitute a comprehensive anatomy of constitutional failure and a detailed blueprint for constitutional reconstruction. The chapters address, in turn, the most problematic provisions and institutional arrangements of the Constitution: the emergency powers, the executive concentration of power, the anti-defection law, the Ninth Schedule, the Governor's office, the federal fiscal structure, the electoral system, the appointment and independence of the judiciary, the citizenship and minority rights framework, and the provisions governing the police and the security apparatus. Each chapter combines the historical, philosophical, jurisprudential, and political analytical modes that have characterized this textbook throughout.

Part Six also devotes significant attention to what might be called the political economy of constitutional reform: the question of who benefits from the existing order, who stands to gain from reform, and what conditions are necessary for the political forces favoring reform to overcome the resistance of those who benefit from the existing arrangements. This is the question that purely theoretical constitutional scholarship tends to neglect but that any realistic program of constitutional reconstruction must confront directly.

The chapter that closes Part Six is an examination of the movements, organizations, traditions, and intellectual currents that represent the living force of constitutional renewal in India: the dalit movement, the women's movement, the environmental justice movement, the farmers'

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movement, the urban workers' rights movement, the LGBTQ+ rights movement, the tribal rights movement, and the broader civil society networks that have, across decades and against enormous odds, kept alive the democratic aspiration of a genuinely just constitutional order.

CHAPTER ONE: THE EMERGENCY POWERS AND THE ARCHITECTURE OF LEGITIMATE DESPOTISM

1.1 The Three Emergencies and Their Constitutional Logic

The Indian Constitution contains, in Part XVIII, a set of provisions that have no parallel in any other major liberal democratic constitution in the world for their breadth, their potential for abuse, and the consistency with which they have actually been abused. These are the emergency provisions: Articles 352 to 360, which authorize the suspension of the normal constitutional order in conditions of national emergency, state-level breakdown of constitutional government, and financial emergency.

To understand why these provisions are so dangerous, it is necessary to understand not merely their textual content but their constitutional logic, which is the logic of what one might call legitimate despotism. The logic works as follows: ordinary constitutional government, with its separation of powers, its federal distribution of authority, its procedural requirements, and its guarantees of individual rights, is designed for ordinary times. In extraordinary times, when the very survival of the state is at stake, the ordinary rules must give way to concentrated, unchecked executive power. The Constitution therefore creates, within itself, an alternative constitutional order for emergencies, an order in which executive power is concentrated, federal principles are suspended, and individual rights are curtailed, all under the legitimating cover of constitutional authorization.

This logic is not absurd on its face. The idea that constitutional governance must be capable of responding to genuine existential crises, that a constitutional order that cannot defend itself from destruction is a constitutional order that has failed its own fundamental purpose, has respectable theoretical foundations. Clinton Rossiter's theory of constitutional dictatorship, developed in the context of the American constitutional system, argued that every constitutional democracy must have some mechanism for temporary concentration of power in genuine emergencies. The theoretical literature on emergency powers, from Carl Schmitt's troubling theory of the sovereign as the one who decides on the exception through to the liberal constitutional responses of scholars such as Bruce Ackerman and Kim Lanne Scheppele, acknowledges that the question of emergency powers is genuinely difficult.

But there is a crucial difference between a theory of emergency powers that is grounded in the recognition of genuine exceptionality and a set of constitutional provisions that have been designed as instruments of ordinary governance masquerading as emergency tools. And the Indian emergency provisions belong to the second category, not the first. This is not a retrospective judgment based on the Indira Gandhi Emergency of 1975 alone. It is a structural observation about the design of the provisions and the colonial tradition from which they derive.

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Article 352 authorizes the President to proclaim a national emergency when "the security of India or of any part of the territory thereof is threatened, whether by war or by external aggression or by armed rebellion." The phrase "armed rebellion" was substituted for "internal disturbance" by the Forty-Fourth Amendment of 1978, after the experience of the 1975 Emergency demonstrated how dangerously broad "internal disturbance" was as a trigger. But even "armed rebellion" is a phrase that, in the context of a country as diverse and politically contested as India, admits of sufficient interpretive flexibility to be invoked in circumstances that do not genuinely threaten the fundamental constitutional order.

The proclamation of emergency has immediate and far-reaching constitutional consequences. Under Article 353, Parliament acquires the power to legislate on subjects that are on the State List of the Seventh Schedule, effectively transferring legislative authority from the states to the Centre for the duration of the emergency. Under Article 358, the six freedoms guaranteed by Article 19(1) are automatically suspended for the duration of emergency caused by war or external aggression. Under Article 359, the President may by order declare that the right to move any court for the enforcement of fundamental rights specified in the order shall remain suspended for the period of the emergency.

The combination of these provisions means that during a declared national emergency, the Centre can legislate on anything it chooses, including subjects that the Constitution assigns to the states, the fundamental freedoms that citizens are guaranteed can be suspended, and the courts can be prevented from examining whether the state has violated any specified fundamental rights. This is not a constitutional framework designed to protect citizens in a genuine crisis. It is a constitutional framework designed to convert the democratic constitutional order into an administrative autocracy whenever the political authority finds it convenient to declare one.

Article 356, which authorizes the imposition of President's Rule in a state, is the emergency provision that has been used most frequently and most egregiously. As Part Five of this textbook documented, Article 356 has been invoked more than 120 times in the history of independent India, frequently to dismiss state governments controlled by opposition parties. The constitutional standard for invocation, "the Government of the State cannot be carried on in accordance with the provisions of this Constitution," is so vague and so susceptible to political manipulation that it has served as a comprehensive tool for partisan interference in state governance.

The Supreme Court's landmark judgment in S.R. Bommai v. Union of India (1994) imposed significant procedural constraints on the use of Article 356, requiring that the proclamation be subject to judicial review, that it be approved by Parliament within a specified period, and that the floor of the state assembly be the appropriate place to test whether a government has lost its majority rather than the subjective judgment of the Governor. The Bommai judgment is a genuinely important constitutional achievement, and it has significantly reduced, though not eliminated, the most egregious abuses of Article 356.

But even after Bommai, the fundamental problem remains: the Constitution still contains a provision that authorizes the Centre to dismiss elected state governments in circumstances defined by constitutional language vague enough to be manipulated. The procedural constraints

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imposed by the Supreme Court are not the same as the substantive constitutional reform that would be required to genuinely protect state autonomy against central interference.

1.2 A Constitutional Comparative: How Other Democracies Handle Emergency Powers

The Indian emergency provisions look even more alarming when placed in comparative perspective. The constitutional systems of the major liberal democracies handle the question of emergency powers in ways that reflect a far greater commitment to individual rights and federal or quasi-federal autonomy than the Indian framework does.

The German Basic Law of 1949, drafted in the shadow of the constitutional failure of the Weimar Republic and the Nazi period, contains elaborate provisions on emergency powers in Articles 80a and 115a through 115l, but these provisions are designed with explicit awareness of the dangers of executive abuse. The German emergency framework requires the consent of the Bundesrat (the chamber representing the states) for the declaration of a state of defense, preserves the Federal Constitutional Court's jurisdiction during emergencies, and includes a "defensive democracy" (streitbare Demokratie) clause in Article 20(4) that authorizes citizens to resist anyone who undertakes to abolish the constitutional order if no other remedy is available.

The South African Constitution of 1996 contains emergency provisions in Section 37, but these provisions include an explicit list of rights that cannot be suspended even during a state of emergency: the right to human dignity, the right to life, the right not to be tortured, the right not to be treated in a cruel, inhuman, or degrading way, and several others. The South African framework also requires legislative approval for the declaration and continuation of a state of emergency, requires that emergency measures be strictly necessary for the restoration of peace and order, and preserves judicial review throughout the emergency.

The Spanish Constitution of 1978 distinguishes between three levels of emergency, the state of alert, the state of exception, and the state of siege, with progressively higher requirements for declaration and parliamentary approval at each level. The Constitutional Court retains jurisdiction throughout. The rights that may be suspended are explicitly listed, and those that are listed include important due process protections.

None of these comparative models is perfect, but each of them represents a more thoughtful attempt to balance the genuine need for emergency powers against the constitutional imperatives of rights protection, federal autonomy, and judicial oversight than the Indian framework provides. The comparative lesson is that emergency powers can be designed in ways that are less dangerous than the Indian design. The failure to do so in India is a constitutional design choice, not an inevitable result of the difficulty of the problem.

1.3 The Forty-Fourth Amendment: Reform That Did Not Reform Enough

The Forty-Fourth Amendment of 1978 was enacted by the Janata government that came to power after the Emergency, with the explicit purpose of preventing a recurrence of the constitutional abuses of the 1975-1977 period. The amendment made several important changes to the emergency provisions: it changed the trigger from "internal disturbance" to "armed rebellion," it

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required a written recommendation from the Union Cabinet (not just the Prime Minister) for the proclamation of emergency, it required approval of the proclamation by both houses of Parliament by a special majority within one month, it gave the Lok Sabha the right to revoke a proclamation of emergency by a simple majority resolution, it removed Article 19 from the list of rights automatically suspended during emergencies (changing this to a contingent suspension only in case of war or external aggression), and it added Article 20 and Article 21 to the list of rights that cannot be suspended even during emergency.

These changes were real improvements. The requirement of a Cabinet recommendation rather than mere Prime Ministerial advice addressed the mechanism by which Gandhi had manipulated the emergency proclamation of 1975. The more demanding parliamentary approval requirements made it harder to use the emergency provisions without genuine legislative support. The protections for Articles 20 and 21 were particularly important, as they meant that even during an emergency, the state could not imprison people without legal authority or deprive them of life or personal liberty through procedures that lacked the fairness required by the Maneka Gandhi interpretation of Article 21.

But the Forty-Fourth Amendment did not address the fundamental problems of the emergency powers framework. It did not abolish Article 356 in favor of a more genuinely federal alternative. It did not establish constitutional requirements for the periodic review and expiration of emergency proclamations. It did not create mechanisms for the accountability of the executive for the consequences of emergency declarations. It did not establish a role for the judiciary in authorizing emergency proclamations before they take effect, as opposed to reviewing them after the fact. And it did not address the systemic use of preventive detention legislation, which operates as a permanent normalized emergency outside the formal framework of Part XVIII.

1.4 The Case for Fundamental Reconstruction of the Emergency Powers

The argument for fundamental reconstruction of the emergency powers framework rests on three propositions that are individually compelling and collectively irresistible.

The first proposition is that the existing framework is constitutionally illegitimate because it fails to respect the foundational principle, articulated in the Preamble of the Constitution itself, that India is a sovereign, socialist, secular, democratic republic. A constitutional order that can be suspended by executive action, even with parliamentary approval, that can centralize governance and suppress individual rights and sideline judicial oversight in conditions defined by criteria insufficiently clear and objective to prevent political manipulation, is not genuinely democratic in the constitutional sense. It is an elected government's option to become an elected dictatorship when it chooses to do so.

The second proposition is that the existing framework is constitutionally unnecessary in the form it takes. Genuine constitutional emergencies, situations in which the fundamental constitutional order is threatened by armed rebellion, invasion, or total breakdown of civil authority, are situations in which the state needs expanded power. But expanded power can be provided through constitutional mechanisms that are far more rights-protective and federalism-respecting than the current framework. The comparative evidence is clear: other constitutional democracies

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have designed emergency frameworks that are more constrained, more judicially supervised, and more rights-protective than the Indian framework, without sacrificing the state's capacity to respond effectively to genuine emergencies.

The third proposition is that the existing framework has caused, and continues to cause, enormous harm. The harm is not only historical, documented in the Emergency of 1975-1977 and in over 120 invocations of Article 356. It is structural and ongoing. The existence of Article 356 distorts federal relations by giving the Centre coercive leverage over state governments. The existence of the normalized emergency provisions of UAPA and NSA, enabled by Article 22, creates a permanent condition of rights suppression for the most vulnerable members of Indian society.

What should replace the existing framework? Drawing on the comparative literature and on the principles articulated in Part Five of this textbook, the following proposals represent a minimum program of reconstruction for the emergency powers.

Article 352 should be replaced by a provision that authorizes emergency proclamations only in conditions of actual armed rebellion or external armed attack, with the trigger defined by objective criteria rather than executive judgment alone. The proclamation should require a two-thirds majority of both houses of Parliament, with the Rajya Sabha's consent specifically required so that state interests are represented in the authorization. The proclamation should automatically expire after 30 days and must be renewed by the same supermajority for each additional 30-day period. The Supreme Court should have original jurisdiction to review the constitutional basis of any emergency proclamation, exercisable immediately upon application by any Member of Parliament or any state government.

Article 356 should be either abolished entirely and replaced by a constitutional obligation on the Centre to provide support to state governments facing constitutional breakdown, or should be retained in a fundamentally reformed version that requires the Supreme Court to certify, on the basis of evidence, that the constitutional machinery of the state has actually broken down before President's Rule can be imposed. The Governor's report recommending President's Rule should be subject to Supreme Court review, not merely to parliamentary approval.

The Preventive Detention provisions of Article 22 should be reformed to align with the standards of the International Covenant on Civil and Political Rights, to which India is a party, which require that any person deprived of liberty on grounds of suspicion be brought before a judicial officer within 24 hours, that detention without trial be authorized only by a court on the basis of specific evidence, and that the detainee have the right to be represented by counsel of their choice.

CHAPTER TWO: THE CONCENTRATION OF EXECUTIVE POWER AND THE CASE FOR GENUINE PARLIAMENTARY GOVERNMENT

2.1 The Constitutional Architecture of Prime Ministerial Supremacy

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The Indian Constitution establishes, in its formal structure, a parliamentary system of government based on the Westminster model: a cabinet collectively responsible to Parliament, a Prime Minister who is first among equals in the cabinet, a legislature that is sovereign within constitutional limits, and a President who is a constitutional head of state performing largely ceremonial functions on the advice of the Council of Ministers.

In constitutional practice, however, the Indian system has evolved into something quite different from the Westminster model it formally resembles. It has become, through a combination of constitutional provisions, constitutional conventions, and political dynamics, a system characterized by the concentration of effective governmental power in the Prime Minister and the Prime Minister's Office to a degree that the framers of the Westminster model would find unrecognizable.

The mechanisms of this concentration have been analyzed in detail in previous parts of this textbook: the party discipline enforced by the anti-defection law, the PMO's control over the bureaucratic apparatus, the use of constitutional institutions as instruments of political control, and the erosion of parliamentary deliberation through the combination of executive dominance and legislative dysfunction. What this chapter examines is the specific constitutional provisions that enable and underpin this concentration of power, and what constitutional reconstruction would look like in this domain.

The first enabling provision is Article 74, which provides that there shall be a Council of Ministers to aid and advise the President, and that the President shall act in accordance with such advice. This provision, read in light of the conventions of parliamentary government, means that the Cabinet, collectively, advises the President. But Article 74 does not specify the internal procedures by which the Cabinet reaches its decisions, does not require that major policy decisions be made by the Cabinet collectively rather than by the Prime Minister individually, and does not create any constitutional mechanism for holding individual Cabinet Ministers accountable for decisions made in their name by the Prime Minister.

The result is a system in which "cabinet government" can mean, in constitutional practice, whatever the dominant Prime Minister of the day decides it should mean. Under Jawaharlal Nehru, who was temperamentally inclined toward genuine collegiality, it meant regular Cabinet discussion of major decisions. Under Indira Gandhi, it came to mean whatever she decided, with the Cabinet informed after the fact. Under Narendra Modi, it has been widely reported that Cabinet Committees are rarely convened for major decisions, that significant policy changes are announced without prior Cabinet discussion, and that the PMO functions as the effective center of government decision-making with Cabinet Ministers reduced to implementing the PMO's directives.

This is not merely a political complaint. It is a constitutional observation about the gap between the formal constitutional requirement of Cabinet government and the actual practice of government. A constitutional order that genuinely requires collective executive responsibility must specify what that requirement means in institutional terms: it must require that major decisions be made through specified collective procedures, must create mechanisms for the

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accountability of individual ministers for the decisions they officially endorse, and must provide for parliamentary oversight of the decision-making process, not merely of its outcomes.

2.2 The Prime Minister's Office as an Unconstitutional Power Center

The Prime Minister's Office is not mentioned in the Constitution of India. It is not established by any law. It is an administrative creation that has, over the decades, grown from a modest secretariat to something approaching a parallel government, with officials who have effective authority over policy in every domain of governance, who can direct the work of Cabinet Ministers and their ministries without being constitutionally accountable to Parliament, and who can control the flow of information within government and between the government and the public.

This constitutional invisibility of the most powerful office in the Indian government is a profound constitutional problem. The PMO is the center of executive power. Its officials make decisions that affect the lives of hundreds of millions of people. Its principal secretary and other senior officials exercise more actual authority than many Cabinet Ministers. And yet it is constitutionally invisible: its officials are not appointed by any constitutionally specified process, are not confirmed by any parliamentary procedure, are not individually accountable to Parliament, and cannot be questioned directly by parliamentary committees about the exercise of their authority.

The constitutional remedy is not necessarily to abolish the PMO, which performs legitimate coordination functions in any large government. The remedy is constitutional recognition of the PMO within a framework that establishes accountability norms appropriate to its actual power. Senior officials of the PMO should be required to appear before parliamentary committees when their exercise of authority is the subject of inquiry. The appointment of the Principal Secretary to the Prime Minister should be subject to a confirmation process. The PMO's policy decisions should be formally channeled through Cabinet processes so that collective ministerial responsibility is genuine rather than nominal.

2.3 Judicial Observations on Executive Power in 2025 and 2026

The Supreme Court's jurisprudence on executive power has evolved significantly in the period 2024-2026, and these developments deserve careful attention because they illuminate both the possibilities and the limits of judicial constitutional reform.

In a 2025 Constitution Bench judgment on the Tribunals Reforms Act, the Supreme Court reiterated, with considerable force, that Parliament cannot circumvent judicially declared constitutional requirements by re-enacting provisions that have already been struck down. The Court described such legislative behavior as a "legislative override in the strictest sense" that violated the basic structure doctrine's protection of judicial independence. This judgment is significant because it establishes that the basic structure doctrine protects not merely the formal existence of judicial institutions but their effective independence, which requires that legislative and executive action genuinely respect constitutional standards rather than merely nominally complying with them.

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In the period leading to April 2026, the Supreme Court has been addressing challenges to the Chief Election Commissioner and Other Election Commissioners (Appointment, Conditions of Service and Term of Office) Act, 2023, which removed the Chief Justice of India from the committee that appoints Election Commissioners and replaced the Supreme Court-mandated committee with a committee controlled by the executive. The challenges argue that this change violates the Anoop Baranwal judgment of 2023, which established the constitutional requirement of an independent appointment committee. The outcome of these petitions will have significant implications for the constitutional framework of institutional independence that is central to the reconstruction program argued for in this textbook.

The emerging constitutional jurisprudence of 2025-2026 suggests that the Supreme Court is, under CJI Surya Kant, adopting a cautious but real interventionist posture on questions of institutional independence. The Court has been willing to make observations about the need for procedural clarity in listing cases, about the limits of executive authority over judicial appointments, and about the constitutional requirements of pre-trial detention, in ways that suggest a judicial commitment to maintaining the rule of law framework even in an environment of substantial executive pressure. But the Court's effectiveness is limited by its institutional position, by the reality that it can constrain but cannot substitute for legislative and executive action, and by the fundamental problem that the constitutional provisions enabling executive dominance are not easily reformed through judicial interpretation alone.

2.4 Reconstruction Proposals: Toward Genuine Parliamentary Government

The reconstruction of the executive-legislative relationship requires a combination of constitutional amendment and institutional design that addresses the mechanisms of executive concentration while preserving the governmental capacity that the parliamentary system provides.

The first proposal is the constitutionalization of the Cabinet and its decision-making procedures. A reformed constitution should specify that major categories of governmental decisions, including the declaration of war or emergency, the conclusion of international treaties, the appointment of constitutional officials, and the adoption of the annual budget, must be formally decided by the full Cabinet by specified procedures. This does not require the minutiae of cabinet procedure to be constitutionalized, which would be impossibly rigid. But it requires that the constitutional norm of collective Cabinet responsibility be given institutional content rather than being left entirely to convention.

The second proposal is the reform of the parliamentary committee system to create genuine legislative oversight of executive action. The current parliamentary committee system is inadequate in several respects: committees are not sufficiently staffed or resourced to conduct effective scrutiny, there is no constitutional or statutory requirement that legislation be referred to committee before passage, committee reports do not bind the executive, and committee proceedings are often not genuinely independent of party control. A reformed constitution should require that all significant legislation be subject to committee scrutiny before passage, that committees be chaired by opposition members in rotating arrangements, that committees have the power to call any executive official, including the Prime Minister, to testify before them, and

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that the government be required to formally respond to committee recommendations within a specified period.

The third proposal is the reform of the confidence mechanism. The standard parliamentary mechanism of the vote of no confidence has been rendered largely ineffective in India by the combination of the anti-defection law (which makes it legally impossible for government backbenchers to support a no-confidence motion without triggering their own disqualification) and the practice of voice votes and whipped votes that make individual legislative accountability nearly impossible to track. A reformed constitution should consider the "constructive vote of no confidence" mechanism developed in Germany, under which a government cannot be removed by a no-confidence vote unless Parliament simultaneously selects a replacement Prime Minister. This mechanism prevents governments from being removed without replacement, which has been the practical effect of India's parliamentary instability, while making the confidence mechanism genuine and functional.

CHAPTER THREE: THE ANTI-DEFECTION LAW AND THE DESTRUCTION OF PARLIAMENTARY ACCOUNTABILITY

3.1 The Tenth Schedule: A Constitutional Mechanism for Silencing Legislators

The Tenth Schedule of the Constitution, inserted by the Fifty-Second Amendment of 1985, is one of the most constitutionally problematic provisions of the document. Its stated purpose was to address the "evil of political defections," the practice by which legislators, having been elected on one party's ticket, switched their party allegiance, often in exchange for money or ministerial office, destabilizing governments and corrupting the democratic process. The practical mechanism it employs is the disqualification of any legislator who votes contrary to the directions of her or his party or abstains from voting contrary to party direction.

The evil the Tenth Schedule was designed to address is real. Aaya Ram Gaya Ram politics, the term coined after a Haryana legislator who changed parties three times in a single day in 1967, was genuinely corrupting the democratic process. The ability of powerful political and financial interests to buy legislative votes from legislators desperate for personal advancement or protection, the practice of "floor-crossing" that destabilized governments without any democratic mandate, these were real problems that required a legislative response.

But the Tenth Schedule addresses the problem of legislative corruption by creating a constitutional structure of legislative subordination that is, in its practical effects, far more damaging to democratic accountability than the corruption it was designed to cure. Under the Tenth Schedule, a legislator who votes against the party whip on any question, including questions of fundamental importance to the constitutional rights of her or his constituents, is subject to disqualification. The power to issue the whip and to decide whether a legislator has violated it is vested in the party's legislative leader or whip, who is typically a loyal instrument of the party leadership. The Speaker of the House, who adjudicates disqualification questions, is

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typically also a political loyalist of the ruling party, at least in the Lok Sabha and in most state assemblies.

The constitutional result is extraordinary: a legislator who is elected by citizens of a particular constituency, who is supposed to represent those citizens' interests in Parliament, and who is constitutionally described as a representative of the people, cannot vote on any parliamentary matter according to her or his own judgment or the preferences of her or his constituents if the party leadership has issued a contrary whip. If she or he does so, she or he loses her or his seat. This is not parliamentary democracy. It is parliamentary feudalism, in which the legislator is a vassal of the party leadership rather than a representative of the citizens.

The consequences of this structure for the quality of parliamentary governance are severe and well-documented. Legislative debates are performative rather than deliberative because no one expects that arguments made in debate will change the votes of members who are legally obligated to vote as their party directs. Parliamentary committees, whose genuine function requires that members act on the basis of their evaluation of evidence rather than party instruction, operate under the shadow of anti-defection discipline that makes genuinely independent committee conduct professionally risky. Conscience votes, which all serious parliamentary democracies permit on matters of profound moral or constitutional significance, are impossible in the Indian system without the member risking disqualification.

3.2 The Tenth Schedule in Comparative Constitutional Perspective

The anti-defection provision of the Indian Constitution is unusual in comparative terms. Most parliamentary democracies do not have constitutional provisions that disqualify legislators for voting against their party. They rely instead on party discipline enforced through internal party mechanisms, through the electoral consequences of perceived disloyalty, and through the social and political pressures of party culture.

The United Kingdom, from whose Westminster parliamentary model India formally derives its system, has no anti-defection law. British MPs regularly vote against their party on matters of principle, and while such votes have consequences for the individual's relationship with the party and for career advancement, they do not result in the loss of the parliamentary seat. The Brexit period demonstrated that genuine parliamentary independence is possible in a Westminster system: Conservative MPs repeatedly voted against their party's position on Brexit legislation, and the British parliamentary system, messy and uncertain as it was during that period, was functioning as a genuine deliberative body in ways that the Indian Parliament, with its anti-defection discipline, cannot.

Germany's parliamentary system also lacks a formal anti-defection mechanism. The German Basic Law's constructive vote of no-confidence mechanism provides stability without requiring the subordination of individual legislative conscience to party discipline. Canadian and Australian parliamentarians regularly cross party lines on specified matters, and both systems function adequately as parliamentary democracies.

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The argument that India's extraordinary social diversity and history of legislative instability require the anti-defection law as a stabilizing mechanism is not without historical support. The period before the Tenth Schedule, particularly the late 1960s and 1970s, was marked by genuine governmental instability caused by defection-enabled floor-crossing. But the cure has proven worse than the disease: the stability achieved by the Tenth Schedule is the stability of an authoritarian system in which the executive is effectively unconstrained by the legislature, not the stability of a genuinely democratic system in which government is stable because it commands genuine majority support.

3.3 The Judicial Treatment of the Tenth Schedule: Kihoto Hollohan and Its Limits

The Supreme Court upheld the constitutional validity of the Tenth Schedule in Kihoto Hollohan v. Zachillhu (1992), by a five-judge bench that held, by a majority of three to two, that the disqualification of legislators for voting against the party whip did not violate the basic structure of the Constitution. The majority reasoning was that the anti-defection provision was intended to strengthen democracy by preventing corruption and it could not be said that it violated democratic principles merely because it limited the individual freedom of legislators.

The dissenting judgments in Kihoto Hollohan raised concerns about the compatibility of the Tenth Schedule with the freedom of speech guarantee of Article 19(1)(a) as applied to legislators, and about the vesting of adjudicatory power in the Speaker, who is not genuinely independent of the majority party. These concerns have been vindicated by subsequent experience: the Speaker's adjudication of disqualification cases has been systematically delayed when delay serves the political interests of the ruling party, as documented in numerous cases including the Manipur assembly crisis, the Maharashtra political crisis of 2019, and the Goa and Karnataka situations.

In Nabam Rebia and Bamang Felix v. Deputy Speaker (2016), the Supreme Court held that the Speaker cannot adjudicate disqualification cases while a notice of motion for the removal of the Speaker is pending in the House. This was an important limitation, but it left intact the fundamental problem of vesting adjudicatory power in a politically non-independent official.

The most comprehensive recent examination of Tenth Schedule jurisprudence came in the Maharashtra political crisis of 2022-2023, in which the Supreme Court had to adjudicate disqualification petitions arising from the split of the Shiv Sena party. The Court's judgment in Subhash Desai v. Principal Secretary, Governor of Maharashtra (2023) held that the Governor had acted incorrectly in inviting the faction led by Eknath Shinde to form the government before the disqualification petitions had been decided. But the Court also directed that the Speaker decide the disqualification petitions, maintaining the institutional arrangement that is the source of the problem. The decision to refer disqualification questions to the Speaker has become standard judicial practice, but it is constitutionally inadequate because the Speaker is not genuinely independent.

3.4 Reconstruction Proposals: Legislative Independence and Democratic Accountability

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The reconstruction of the legislative accountability framework requires changes that are simultaneously specific and structural. The following proposals represent a minimum program for restoring genuine parliamentary democracy.

First, the Tenth Schedule should be fundamentally reformed to restrict the anti-defection penalty to two specific situations: explicit resignation from the party after election (which amounts to a betrayal of the electoral mandate) and a vote that directly causes the fall of the government that the party is supporting or opposing. In all other cases, legislators should be free to vote according to their judgment without risking disqualification. The principle is that party discipline is enforced through party mechanisms and electoral consequences, not through constitutional disqualification.

Second, the adjudication of disqualification cases should be transferred from the Speaker to an independent tribunal, perhaps constituted by the Election Commission or by a constitutional committee including members from all major parties and independent constitutional experts. The current arrangement of Speaker adjudication is constitutionally intolerable because it places judicial power in the hands of a political official who is almost always a partisan ally of the party whose disqualification case is being decided.

Third, a reformed constitution should explicitly recognize the right of legislators to vote according to their conscience on specifically enumerated matters: matters of constitutional amendment, ratification of international human rights treaties, declaration of emergency, appropriations bills, and any matter that the legislator's constituency has expressed a documented preference on through a petition signed by a specified number of registered voters. Conscience votes on these matters should be immune from anti-defection penalty.

CHAPTER FOUR: THE NINTH SCHEDULE, THE BASIC STRUCTURE, AND THE FUNDAMENTAL RIGHTS IN CRISIS

4.1 The Ninth Schedule as a Sanctuary from Fundamental Rights

The Ninth Schedule of the Constitution was inserted by the First Constitutional Amendment of 1951 at the instigation of the Nehru government, which faced a constitutional crisis when the Supreme Court struck down Bihar's land reform legislation as violating the right to property. The Schedule provides that the laws listed in it cannot be challenged in court on the ground that they violate Part III (the Fundamental Rights chapter). Laws can be added to the Ninth Schedule by constitutional amendment, and the Schedule now contains 284 items including state land reform acts, central economic legislation, and various other laws.

The constitutional theory behind the Ninth Schedule was that certain socially necessary legislation, particularly land reform designed to break up feudal landholdings and redistribute land to peasants, required protection from judicial interference on fundamental rights grounds. The political context was one in which a conservative Supreme Court, applying the literal text of the right to property, was striking down the Congress government's signature social reform

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legislation. The government's response was to constitutionally immunize the legislation from judicial review.

This is the core problem with the Ninth Schedule, stated in its simplest form: it creates a category of legislation that is exempt from the fundamental rights guarantees that are supposed to apply to all law. A schedule that was originally justified by the need to protect genuinely progressive land reform legislation from a property-rights-obsessed judiciary has evolved into a mechanism for immunizing any legislation that a parliamentary majority with constitutional amendment capacity decides to protect from fundamental rights scrutiny. It is a mechanism for the selective suspension of constitutional rights guarantees through the legislative process, which is exactly what a constitution is supposed to prevent.

The Supreme Court addressed the limits of Ninth Schedule immunity in I.R. Coelho v. State of Tamil Nadu (2007), where a nine-judge bench held that laws added to the Ninth Schedule after April 24, 1973 (the date of the Kesavananda Bharati judgment establishing the basic structure doctrine) can be challenged if they are found to abrogate or abridge fundamental rights to the extent of damaging or destroying the basic structure of the Constitution. This is a significant limitation, and it means that the Ninth Schedule cannot be used to immunize legislation that violates the "core" of fundamental rights.

But the I.R. Coelho limitation is itself constitutionally problematic. It divides the fundamental rights chapter into two categories: rights that are so fundamental that they cannot be abridged even by Ninth Schedule immunization, and rights that can be so abridged. This division is not made by the text of the Constitution, which applies all fundamental rights equally to all legislation. It is made by the Supreme Court on the basis of a judgment about which rights are sufficiently "core" to deserve unconditional protection. This judgment is inherently contestable and has proven difficult to apply consistently.

4.2 The Waqf Amendment Act 2025 and the New Frontier of Minority Rights Challenges

The Waqf (Amendment) Act of 2025 has generated one of the most significant constitutional controversies of the current period, with a large number of petitions challenging it in the Supreme Court on the ground that it interferes with the fundamental right of the Muslim community to manage its own religious affairs, guaranteed by Article 26 of the Constitution. As reported in December 2025, these petitions are scheduled for hearing by a Constitution Bench in 2026 and represent a direct test of the boundary between the state's power to regulate religious affairs and the constitutional protection of minority religious autonomy.

Article 26 guarantees every religious denomination the right to manage its own affairs in matters of religion, subject to public order, morality, and health. The Waqf Amendment Act, critics argue, fundamentally alters the governance structure of waqf institutions (Islamic religious endowments) in ways that give non-Muslim officials significant power over the management of Muslim religious trusts, which they say goes beyond legitimate state regulation of temporal matters and constitutes interference with the community's right to manage its own religious affairs.

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The case raises issues that go beyond the specific provisions of the Waqf Act. It tests the constitutional limit of the state's power to regulate minority religious institutions, a question that has been decided differently in different contexts throughout India's constitutional history. The essential religious practices doctrine, which the Supreme Court uses to determine which religious practices are protected from state regulation, has itself been criticized as judicially arrogating to secular judges the power to determine what is essential to a religion. The Sabarimala case, currently being reheard by a nine-judge bench of the Supreme Court, raises the same basic structural question from a different direction: the April 2026 hearings have produced significant debate about whether Article 25(2)(b), which allows the state to enact legislation for social reform and to throw open Hindu religious institutions to all sections of Hindus, overrides the rights of religious denominations under Article 26 to manage their own affairs.

These cases, taken together, represent a constitutional frontier on which the boundaries of religious freedom, state authority, minority rights, and gender equality are all being contested simultaneously. The outcome of these cases will significantly shape the constitutional framework of religious governance in India for decades to come. What this textbook argues is that the constitutional framework for adjudicating these questions is inadequate because it relies on the essential religious practices doctrine, which is judicially developed, inconsistently applied, and ultimately based on the judges' own views about what matters most in a religion rather than on principled constitutional analysis.

4.3 The Right to Privacy and the Surveillance State: Post-Puttaswamy Developments

The recognition of the right to privacy as a fundamental right under Article 21 in the Puttaswamy judgment of 2017 was a landmark constitutional achievement. The nine-judge bench held, unanimously, that privacy is an intrinsic element of human dignity and autonomy and is constitutionally protected as part of the right to life under Article 21. The judgment has had significant consequences for the development of Indian constitutional law: it provided the constitutional basis for striking down Section 377's criminalization of consensual same-sex conduct in the Navtej Singh Johar case of 2018, and it has been invoked in numerous subsequent cases involving state surveillance, data protection, and the rights of individuals against information-gathering by both the state and private actors.

But the right to privacy, despite being constitutionally recognized, has not been adequately protected in the legislative and administrative framework that has developed since 2017. The Digital Personal Data Protection Act of 2023, which was supposed to give legislative content to the constitutional right to privacy, has been widely criticized by privacy advocates, civil society organizations, and constitutional scholars for creating a framework that is more protective of state surveillance prerogatives than of individual privacy rights. The Act grants the central government broad exemptions from the privacy requirements it imposes on private entities, meaning that the state retains largely unchecked surveillance capacity while private data processors face significant regulatory obligations.

In 2025, the challenges to the scope of surveillance under the UAPA, the challenges to the admissibility of digital evidence obtained through surveillance, and the challenges to the constitutionality of the Pegasus-type surveillance operations (which the Supreme Court's

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technical committee had investigated without reaching definitive findings about government responsibility) continue to work their way through the constitutional and criminal justice systems. The constitutional framework for state surveillance, in the post-Puttaswamy but pre-comprehensive-privacy-legislation period, remains deeply inadequate.

4.4 The Sedition Replacement: Section 152 of the Bharatiya Nyaya Sanhita

The Indian Penal Code's Section 124A, the colonial sedition law enacted in 1870 and used extensively against independence activists including Tilak and Gandhi, was effectively suspended by the Supreme Court in S.G. Vombatkere v. Union of India in 2022, pending a comprehensive review of its constitutional validity. The government subsequently enacted the Bharatiya Nyaya Sanhita in 2023, which nominally abolished Section 124A but replaced it with Section 152, which criminalizes acts that "excite or attempt to excite secession or armed rebellion or subversive activities" or "encourage feelings of separatist activities" in terms that are at least as broad as the original sedition law and arguably broader.

Section 152 has already been challenged before the Supreme Court by retired Army officer S.G. Vombatkere, who argues that the provision "in effect, reintroduces the colonial sedition law previously codified as Section 124A under a new nomenclature." This challenge, as reported in December 2025, has been tagged with the pending Vombatkere petition and is expected to be heard in 2026. The constitutional question is whether a provision that criminalizes speech that "encourages feelings of separatist activities," without requiring any actual incitement of or connection to violence, meets the constitutional standard for restrictions on free speech established by Article 19(2) and by the Supreme Court's consistent jurisprudence that restrictions on free speech must be proportionate to the harm they address.

The constitutional analysis here connects to a broader pattern in the new criminal codes of 2023: the replacement of explicitly colonial provisions with provisions that are framed in constitutional language but that preserve or expand the substantive scope of state authority over individual conduct, while changing the nomenclature to remove the colonial association. This is a sophisticated form of constitutional evasion that requires careful judicial scrutiny of substance rather than form.

CHAPTER FIVE: FEDERALISM, FISCAL AUTONOMY, AND THE REFORM OF THE UNION-STATE RELATIONSHIP

5.1 The GST and the Fiscal Constitution: Reform and Its Limits

The introduction of the Goods and Services Tax in 2017 was the most significant reform of India's fiscal constitution since independence. The GST replaced a complex and economically inefficient system of cascading central and state taxes with a unified value-added tax that applies across the country, creating for the first time a genuinely unified Indian national market. The constitutional mechanism for the GST, the 101st Constitutional Amendment and the GST Council established under Article 279A, represented a novel federal governance arrangement in

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which the Centre and the states jointly decide GST rates and policy through a council in which the Centre has one-third of the voting weight and the states collectively have two-thirds, with most decisions requiring a three-quarters majority.

The GST reform is relevant to the argument of this textbook in several respects. First, it demonstrates that significant constitutional economic reforms are possible through the amendment process when there is sufficient political consensus, which suggests that the argument from constitutional entrenchment against reform is not absolutely determinative. Second, it illustrates both the possibilities and the limitations of cooperative federalism as a constitutional model: the GST Council has been a genuinely innovative governance institution, but its decisions have been disputed, the revenue-sharing arrangements have been contested, and the states have argued that the GST regime has reduced their effective fiscal autonomy by eliminating their independent power over indirect taxes.

Third, the GST reform illustrates the need for constitutional protection of the fiscal interests of states in a more robust way than the current framework provides. The Finance Commission mechanism, which determines the sharing of central taxes with the states, is a genuinely important constitutional institution, but it operates within a framework in which the Centre retains significant unilateral power over fiscal policy, including the power to introduce new cesses and surcharges on centrally collected taxes that are not shared with the states, to design centrally sponsored schemes that effectively direct state expenditure toward Central priorities, and to create new forms of tax revenue that circumvent the Finance Commission sharing formula.

5.2 The Governor and the States: The Continuing Crisis

The constitutional crisis of the Governor's role in the Indian federal system has, if anything, intensified in the period 2024-2026. The Supreme Court's November 2023 judgment in State of Tamil Nadu v. Governor of Tamil Nadu, which held that Governors cannot indefinitely withhold assent to state Bills and must exercise their constitutional functions within a reasonable time, was an important judicial intervention that addressed the most egregious form of gubernatorial obstruction of state legislative authority.

But the judgment's implementation has been uneven and contested. Governors appointed by the Central government in opposition-ruled states have continued to use their office as an instrument of political interference, refusing to summon assemblies, delaying the swearing-in of newly elected Chief Ministers, and using the reserve powers of the office in ways that serve the political interests of the party that appointed them rather than the constitutional interests of the state they serve.

The constitutional crisis of the governorship is exacerbated by the fact that the Supreme Court, in imposing time-based requirements on the exercise of gubernatorial functions, is essentially performing a legislative role: specifying the constitutional obligations of an official whose constitutional text is silent on many of the most contested questions about the scope of gubernatorial discretion. This judicial legislation is necessary in the absence of a legislative or constitutional framework that adequately specifies what the Governor can and cannot do, but it is

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inherently unstable because it can be contested and circumvented in ways that explicit constitutional text cannot be.

The reform of the governorship requires constitutional amendment, not merely judicial interpretation. The most straightforward reform is the abolition of the Governor's office and its replacement by a directly elected state head, who would have democratic legitimacy independent of the Centre and would exercise the discretionary powers of the office according to the constitutional framework rather than in the service of the appointing party. This is the American model, in which the state Governor is directly elected and is genuinely accountable to the state's citizens rather than to the federal government.

The objection to this reform is that it would create a potential source of constitutional conflict between the elected Governor and the elected state government, particularly when they are from different parties. This objection has some force, but it misunderstands the nature of the constitutional choice. The choice is not between a system with no conflict and one with potential conflict. The choice is between a system in which the Centre systematically uses the Governor's office to undermine opposition-ruled states (which is the current situation), and a system in which there might occasionally be intra-state conflict between an elected Governor and an elected government. The latter situation is more constitutional because it would be resolved through the democratic and legal mechanisms of the state rather than through central political interference.

5.3 Article 3: The Parliamentary Power to Redraw State Boundaries

Article 3 of the Constitution empowers Parliament to form new states, alter the boundaries of existing states, alter the names of states, and increase or diminish the areas of existing states, by ordinary legislation subject only to the requirement that the Bill be referred to the legislature of the affected state for its views (which Parliament is not obliged to accept). This provision, under which the reorganization of states can be accomplished without the consent of the affected states, represents one of the most significant departures from federal principles in the constitutional framework.

The use of Article 3 to convert Jammu and Kashmir from a state into two Union Territories in 2019 was the most dramatic exercise of this power in Indian constitutional history. The reorganization was accomplished by the Jammu and Kashmir Reorganization Act of 2019, which was passed by Parliament when the state's legislative assembly was suspended, so that the requirement to "ascertain the views" of the state legislature was satisfied by reference to the views of the Lok Sabha and Rajya Sabha members from the state rather than to the views of an actually functioning state legislature.

The Supreme Court upheld the constitutional validity of this reorganization in In Re: Article 370 (2023), holding that Parliament had the power under Article 3 read with Article 356 to reorganize the state of Jammu and Kashmir in the manner in which it did. The judgment is among the most controversial of recent constitutional decisions, and it has been criticized by constitutional scholars including those from outside the country who noted the exceptional character of Parliament's power under the ruling: the effective ability to eliminate a state entirely

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and convert it into centrally administered Union Territories without the consent of the affected population.

The constitutional principle at stake is fundamental: in a genuinely federal system, the boundaries and status of the constituent units should not be alterable by the federal government without the consent of the affected unit. The American constitutional framework requires that no state be divided or merged without its own consent, as specified in Article IV, Section 3. The German Basic Law requires that any changes to the territory of the Lander require a constitutional referendum in the affected areas. The Indian Constitution's Article 3 provides for far weaker protection of state territorial integrity, and the 2019 exercise has demonstrated how weak those protections are in practice.

5.4 The Northeastern States and the Sixth Schedule: Special Constitutional Arrangements and Their Inadequacy

The Sixth Schedule of the Constitution, which applies to tribal areas in the northeastern states of Assam, Meghalaya, Tripura, and Mizoram, represents the Constitution's most elaborate attempt to accommodate the special governance needs of tribal communities through constitutional recognition of their self-governance institutions. The Sixth Schedule creates autonomous district councils and regional councils with legislative and judicial powers in specified matters, including the management of forests, the regulation of shifting cultivation, the regulation of money-lending, the administration of village and town administration, and personal law.

The Sixth Schedule has been more effective than the Fifth Schedule in providing genuine autonomy to tribal communities in the areas it covers, partly because the northeastern states have a higher concentration of tribal population and stronger tribal political movements than the states covered by the Fifth Schedule, and partly because the Sixth Schedule grants more specific and enforceable powers to the autonomous councils than the Fifth Schedule grants to state governors in relation to tribal areas.

But the Sixth Schedule has its own significant problems. The autonomous councils have frequently been captured by the national parties rather than being genuinely representative of tribal communities. The relationship between the councils and the state governments has been contentious, with disputes about the scope of council powers and about the availability of resources. The extension of the Sixth Schedule framework to specific tribal communities in other states, which several movements have demanded, has been politically difficult because it would require constitutional amendment.

The broader constitutional lesson is that the accommodation of diverse communities within the Indian constitutional framework requires more flexible and more genuinely empowering mechanisms than the current framework provides. The constitutional framework for tribal governance reflects a colonial model of administration "for" tribal communities rather than a democratic model of governance "by" tribal communities. The reconstruction of this framework requires taking seriously the demands of tribal movements for genuine self-determination, for the recognition of customary law and governance traditions, and for the constitutional protection of territorial integrity against development-induced displacement.

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CHAPTER SIX: THE ELECTORAL SYSTEM, DEMOCRATIC REPRESENTATION, AND THE FAILURE OF FIRST-PAST-THE-POST

6.1 The Distortion of Democratic Representation

The first-past-the-post (FPTP) electoral system that India inherited from Britain and that is embedded in the constitutional framework through Articles 81, 170, and the Representation of the People Acts has failed the democratic promise of the Indian Constitution in ways that are specific, measurable, and constitutionally significant.

The basic problem of FPTP in a multi-party democracy is vote-seat disproportionality: the share of parliamentary seats a party wins bears no necessary relationship to the share of votes it receives from the national electorate. This distortion is not a minor statistical quirk. In India's multi-party democracy, with strong regional parties and significant minority parties, the distortion can be extreme. The BJP's parliamentary majority of 2019, won with approximately 37 percent of the national vote, gave that party 303 seats out of 543, or 55.8 percent of all seats. The 2024 elections, in which the BJP won approximately 36.5 percent of the vote, resulted in 240 seats, or 44.2 percent, a situation in which the party needed coalition support to form a government. But across the entire history of Indian elections, the FPTP system has consistently translated minority vote shares into majority seat shares for whichever party happens to have its support concentrated most effectively in relation to the distribution of constituencies.

The political consequences of this distortion are several. First, it creates incentives for identity-based mobilization: the most efficient way to win constituencies under FPTP is to mobilize a reliable bloc of voters on the basis of caste, religion, ethnicity, or language rather than on the basis of programmatic policy. The much-lamented communalization of Indian electoral politics is not solely a product of social prejudice or ideological manipulation. It is partly a rational response to the incentive structure created by the FPTP electoral system.

Second, FPTP creates systematic incentives for the manipulation of constituency boundaries (gerrymandering) to maximize the vote efficiency of the party in power. The delimitation of parliamentary constituencies in India is conducted by the Delimitation Commission, an independent body that is supposed to draw constituency boundaries on the basis of population rather than political advantage. But the timing of delimitation exercises, the criteria used for boundary drawing, and the political environment in which the commission operates, all create opportunities for the political interests of the ruling party to influence the outcome.

Third, FPTP creates systematic underrepresentation for smaller parties, regional parties, and parties representing minority communities whose supporters may be geographically dispersed rather than concentrated. The result is a parliamentary composition that, even when individual constituencies are fairly contested, does not accurately reflect the diversity of political preferences of the Indian electorate.

6.2 Electoral Bond Scheme: Death and Aftermath

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The Supreme Court's landmark judgment of February 2024 in Association for Democratic Reforms v. Union of India struck down the electoral bond scheme as unconstitutional, holding that it violated the voters' right to information under Article 19(1)(a). The Court held that voters have a constitutional right to know the sources of funding of the political parties for which they vote, because without this information the exercise of the right to vote is not genuinely informed, and that the electoral bond scheme's guarantee of donor anonymity was unconstitutional to the extent that it withheld from voters information about the financial relationship between political parties and their donors.

The judgment is constitutionally significant on multiple grounds. It is the first clear judicial articulation of the voters' right to information about party funding as a fundamental right derived from the freedom of speech and expression. It establishes a principle that political finance cannot be organized in ways that deliberately obscure the relationship between donor interests and party policy from the voting public. And it provides a constitutional basis for requiring much more extensive disclosure of political finance than has been the case in India's history.

But the judgment's practical consequences have been limited. The data disclosed following the Court's order, which showed that many of the largest donors to the ruling party were also recipients of significant government contracts and regulatory decisions, created a major public controversy about the relationship between political donations and favorable government treatment. But the constitutional framework for regulating political finance remains inadequate: there is no statutory requirement of comprehensive real-time disclosure of all political donations, no effective limit on the amount any individual or corporation can donate to a political party, no public financing system that reduces parties' dependence on large private donors, and no independent enforcement mechanism with effective powers to investigate and penalize violations of campaign finance requirements.

6.3 The One Nation One Election Proposal: A Constitutional Critique

The Constitution (129th Amendment) Bill, introduced in the Parliament in December 2023 and its related developments in 2024-2026, proposes to synchronize all state assembly elections with Lok Sabha elections so that the entire country holds elections simultaneously every five years. This is the "One Nation One Election" proposal that has been a long-standing BJP policy commitment.

The proposal has been justified on grounds of administrative efficiency (reducing the cost and disruption of frequent elections), economic benefit (reducing the period during which the model code of conduct limits government activity), and governance quality (allowing governments to focus on policy rather than perpetual electoral campaigning). These are not frivolous arguments. The frequency of elections in India, with different state elections occurring throughout the year in different states, does create significant governance problems.

But the constitutional objections to the proposal are serious and, this textbook argues, ultimately compelling. The most fundamental objection is that synchronized elections would effectively fix the life of all state assemblies at five years, regardless of whether the elected government has lost the confidence of the legislature. Under the Indian parliamentary system, a government can fall

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at any time if it loses the confidence of the legislature. If all elections are synchronized, this cannot happen without either holding an out-of-cycle election (which would desynchronize the system) or having the state governed for the remainder of the five-year period by an unelected government, which is constitutionally untenable.

The proposal's handling of this problem, which involves provisions for "no confidence" votes to trigger some form of caretaker administration rather than new elections until the next synchronized cycle, effectively removes the confidence mechanism from the parliamentary system and replaces it with something more like a fixed-term executive model. This is a fundamental change to the character of parliamentary government that requires not merely legislation but constitutional amendment of the most profound kind.

The One Nation One Election proposal, in the context of the broader argument of this textbook, represents a constitutionally regressive reform: it would further concentrate power at the Centre by reducing the frequency and salience of state-level democratic contests, would reduce the accountability of state governments to their electorates, and would make it harder for regional parties to build and maintain the state-level electoral bases from which they provide the most effective check on central government dominance. It is a reform that would benefit the dominant national party and disadvantage the regional parties that have been the most effective defenders of federal pluralism in Indian democracy.

6.4 Reconstruction Proposals: Proportional Representation and Electoral Reform

The case for moving from FPTP to a proportional or mixed-member proportional representation system is overwhelming from the perspective of democratic theory and comparative constitutional practice. Proportional representation ensures that the composition of the legislature more accurately reflects the diversity of voter preferences, reduces the incentives for identity-based mobilization, eliminates the systemic disadvantage of minority parties, and makes the vote of every citizen count toward the composition of the legislature rather than being "wasted" in safe constituencies.

The German mixed-member proportional system, which combines constituency-based representation (allowing voters to choose a local representative who knows and is accountable to the constituency) with proportional allocation of seats (ensuring that the overall composition of the Bundestag reflects the national distribution of party support), offers a model that is widely regarded as combining the advantages of both the constituency-based and the proportional systems. Germany's Basic Law does not mandate proportional representation, but the Electoral Law provides for it, and the system has produced, over decades, a legislature that is representative, stable, and genuinely deliberative in ways that the Indian Parliament is not.

Changing India's electoral system from FPTP to proportional or mixed-member proportional would require constitutional amendment, because the current system is specified in the constitutional framework. But it would not require an entirely new constitution: it would require amendment of Articles 81, 170, and the relevant provisions of the Representation of the People Acts. The political obstacle is significant: any party that currently benefits from the FPTP system's tendency to translate minority vote shares into majority seat shares will oppose

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proportional representation because it would reduce that advantage. The BJP, which won working majorities with minority vote shares in 2014 and 2019, would be a particularly powerful opponent of proportional representation.

The transformation of the electoral finance framework, complementing the post-electoral bond situation, requires comprehensive political finance legislation that mandates complete real-time disclosure of all political donations above a minimum threshold, establishes a system of public financing of elections based on vote share in the previous election, caps individual and corporate donations to political parties at levels that prevent the dominance of large donors, and creates an independent and well-resourced enforcement authority with genuine investigative and penalty powers.

CHAPTER SEVEN: THE JUDICIARY, THE COLLEGIUM, AND THE INDEPENDENCE PARADOX

7.1 The Collegium System and the Crisis of Judicial Appointments

The system of judicial appointments through the collegium of senior Supreme Court judges, established through the Supreme Court's "Three Judges Cases" of 1982, 1993, and 1998, was designed to protect judicial independence from executive interference in the selection of judges. The Three Judges Cases progressively transferred effective appointment authority from the executive (where the Constitution's text, in Article 124, formally vests it, subject to "consultation" with the Chief Justice) to the collegium of the five most senior Supreme Court judges, who make recommendations that the executive has, by convention, almost always been required to accept.

The collegium system has generated a set of problems that are by now extensively documented and widely recognized. The system lacks transparency: collegium deliberations are not recorded, there are no written criteria for the selection of judges, no reasons are given for either the recommendation or the rejection of candidates, and unsuccessful candidates have no right to know why they were not recommended. The system lacks accountability: there is no mechanism for external review of collegium decisions, no requirement that the collegium's composition or decision-making be representative of the diversity of the legal profession or of the society whose rights it adjudicates, and no sanction for collegium decisions that are arbitrary, nepotistic, or professionally inadequate.

The system is demonstrably unrepresentative. The Supreme Court of India, as of early 2026, has among the lowest proportions of women, scheduled caste, scheduled tribe, and minority judges of any major constitutional court in the world. The social composition of the Supreme Court is overwhelmingly from a small number of social backgrounds: urban, upper-caste, English-educated, with connections to established legal families and legal networks. This is not a coincidence. It is a systemic consequence of a selection process that relies on informal networks, that has no diversity requirement, and that is controlled by individuals who are themselves overwhelmingly from the demographic groups that are overrepresented.

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7.2 The NJAC Judgment and Its Constitutional Legacy

The Supreme Court's striking down of the National Judicial Appointments Commission Act in Supreme Court Advocates-on-Record Association v. Union of India (2015) was one of the most constitutionally controversial decisions in recent Indian constitutional history. The NJAC Act, which was passed with the support of the ruling BJP and almost all opposition parties, would have replaced the collegium system with a commission consisting of the Chief Justice and two senior Supreme Court judges, the Union Law Minister, and two "eminent persons" selected by a committee including the Chief Justice, the Prime Minister, and the Leader of the Opposition. The commission's decisions would require at least a four-to-six majority, with the government's two nominees and the Law Minister together being able to veto any appointment.

The Supreme Court struck down the NJAC Act on the ground that it violated the independence of the judiciary, which is a basic feature of the Constitution established in Kesavananda Bharati. The majority held that any participation of the executive in the appointment of judges, beyond the formal role of the President as appointing authority acting on the recommendation of the collegium, was constitutionally impermissible because it could give the executive leverage over the judiciary.

This judgment has been widely criticized, including by scholars who support judicial independence as a constitutional value, on the ground that the Court used the basic structure doctrine to insulate from legislative reform a system of judicial self-appointment that is itself fundamentally problematic for constitutional democracy. The collegium system, as critics note, is not in the text of the Constitution. It was created by judicial interpretation of the word "consultation" in Article 124. Having created a system of self-appointment through judicial interpretation, the Court then declared that system to be a constitutional requirement immune from legislative reform. This is a remarkable instance of judicial self-entrenchment.

The NJAC controversy also illustrates a broader paradox in Indian constitutional design: the basic structure doctrine, which was developed as a protection of constitutional democracy from majoritarian excess, can itself become an instrument of institutional self-protection that insulates undemocratic practices from democratic reform. The independence of the judiciary is genuinely a basic feature of the Constitution. But the specific mechanism of judicial self-appointment through the collegium is not mandated by any constitutional text, and its protection as a requirement of judicial independence goes far beyond what is necessary to maintain genuine independence from executive interference.

The 2025 Supreme Court digest reveals important developments on related questions of judicial accountability. The Supreme Court has confronted, in 2025, challenges to the Tribunals Reforms Act that reintroduced already-struck-down provisions, demonstrating a legislative tendency to test the limits of judicial review through repetitive re-enactment of problematic legislation. The Court has continued to develop the principle that tribunal members must have conditions of appointment and service that guarantee their independence, consistent with the basic structure principle.

7.3 Judicial Conduct Controversies: 2025 and the Accountability Gap

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The year 2025 was, as reported by law journals and legal analysis platforms, one in which judicial conduct dominated public debate in ways that illuminated the profound accountability gaps in the Indian judicial system. Allegations involving sitting judges, failed impeachment attempts, and uncomfortable questions about post-retirement conduct of former Chief Justices created a public crisis of confidence in judicial institutions that has not yet been adequately addressed.

The constitutional mechanism for removing judges of the Supreme Court and High Courts is established in Article 124(4) and (5): a judge can be removed by an order of the President after an address by each house of Parliament in the same session by a majority of the total membership and a two-thirds majority of members present and voting, after inquiry under the Judges (Inquiry) Act, 1968. This provision has never been successfully used in the entire history of independent India. Multiple impeachment motions have been initiated and have failed, usually because the required majority proved politically impossible to assemble in Parliament when legislators from the ruling party refused to support impeachment proceedings against judges appointed during friendly governments.

The accountability gap in the Indian judicial system is therefore structural: the only formal mechanism for judicial accountability is so demanding in its procedural requirements and so vulnerable to political manipulation that it is effectively unavailable for use against any judge who retains the political support of the ruling party. This leaves the judiciary with no effective institutional mechanism of internal accountability other than its own informal norms of peer pressure, which have proven inadequate to address serious instances of judicial misconduct.

7.4 Reconstruction Proposals: A Constitutional Framework for Judicial Accountability and Representation

The reconstruction of the judicial appointment and accountability framework requires changes that are both more modest and more radical than the NJAC approach. They are more modest in that they do not seek to give the executive a dominant role in judicial appointments, which would indeed compromise judicial independence. They are more radical in that they envision a genuinely independent appointment process that is also transparent, meritocratic, and representative in ways that the current collegium system is not.

The proposal is for a Judicial Appointments Commission constituted entirely outside of both the executive and the existing judiciary. The Commission should include a retired Chief Justice selected by a panel of retired Supreme Court judges, an eminent legal scholar elected by the academic legal community, a person of demonstrated commitment to civil liberties and human rights elected by a recognized civil society body, a representative of the Bar associations of the Supreme Court and High Courts, and a member ensuring representation of scheduled castes, scheduled tribes, or minorities, selected through a process that ensures this representation.

The Commission should operate with complete transparency: all applications and recommendations should be public, all criteria for assessment should be published in advance, all decisions should be accompanied by written reasons, and all proceedings of the Commission

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should be subject to judicial review on the grounds of procedural impropriety or legal error (though not on the merits of the selection judgment itself).

The mechanism for accountability of sitting judges should include a judicial standards committee, constituted by a combination of senior retired judges, legal professionals, and lay members with demonstrated commitment to public interest, with the power to investigate complaints about judicial conduct, to make findings, and to recommend to Parliament specified forms of disciplinary response ranging from private admonition through suspension to the initiation of removal proceedings. The findings of the committee should be made public, and the judge concerned should have the right to be heard before any finding is made.

CHAPTER EIGHT: CITIZENSHIP, MINORITIES, AND THE CONSTITUTION UNDER COMMUNAL PRESSURE

8.1 The CAA and the Constitutional Citizenship Framework

The Citizenship Amendment Act of 2019, which created a path to expedited Indian citizenship for persecuted non-Muslim minorities from Afghanistan, Bangladesh, and Pakistan, but not for persecuted Muslims from the same countries, has been challenged before the Supreme Court in a large number of petitions that remain pending as of April 2026. The constitutional challenge to the CAA is grounded primarily in Article 14 (equality before the law and equal protection of laws) and Article 15 (prohibition of discrimination on grounds of religion), read with the constitutional requirement of secularism as a basic feature of the Constitution.

The government's response to the constitutional challenge is that the CAA does not affect the citizenship rights of any Indian citizen or any person within Indian territory, and that it merely creates a special dispensation for a defined class of persecuted persons who are seeking refuge in India. The fact that the class is defined partly by religion, the argument goes, is justified by the specific historical and political context of the three countries named, in which non-Muslim minorities have faced documented and severe persecution, while Muslim minorities in those same countries have faced less systematic persecution because Muslims are the majority religious community in those countries.

This argument has some initial plausibility, but it rests on empirical claims that are contested and on a legal framework that the constitutional scholars and human rights organizations challenging the Act dispute. Ahmadiyyas, Shias, and Hazaras in Pakistan face severe religious persecution. Rohingya Muslims in Bangladesh and Myanmar face persecution that has been characterized as genocidal by international bodies. The claim that Muslims from the three named countries do not face persecution justifying refugee protection is empirically questionable.

More fundamentally, the constitutional question raised by the CAA is not whether the distinction between Muslim and non-Muslim persecuted persons from neighboring countries is empirically justifiable (a complex factual question), but whether the Constitution permits the state to use religion as a criterion in determining eligibility for citizenship. Article 11 of the Constitution

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grants Parliament the power to regulate citizenship "by law," and the Citizenship Act, 1955 is that law. But the power to regulate citizenship by law does not include the power to regulate it in ways that violate Article 14 and Article 15, or that undermine the secular character of the state which is a basic feature of the Constitution.

The relationship between the CAA and the National Register of Citizens proposed for all-India implementation, which would require every resident to establish citizenship through documentary proof, raises a further and extremely serious constitutional concern. If the NRC were implemented without the CAA, all undocumented residents who cannot establish citizenship through documents would face the prospect of being declared non-citizens. The CAA creates a pathway to citizenship for non-Muslim undocumented residents, but not for Muslim undocumented residents. The combined effect of the CAA and a national NRC would therefore be to render effectively stateless a category of Muslim residents who cannot prove citizenship through documents, while providing a solution for non-Muslim residents in the same situation. Critics have described this combined framework as a constitutional mechanism for creating a class of effectively stateless Muslim residents within India, which would represent a fundamental violation of constitutional equality.

8.2 The Waqf Amendment and the Constitutional Governance of Muslim Religious Institutions

The Waqf (Amendment) Act of 2025 represents the most significant recent intervention in the constitutional framework governing Muslim religious institutions. As noted earlier, the Act has generated extensive constitutional controversy and is being challenged before the Supreme Court in cases expected to be heard by a Constitution Bench in 2026.

The constitutional issues raised by the Waqf Amendment Act deserve careful analytical attention because they go beyond the specific provisions of the Act to fundamental questions about the relationship between the state and minority religious institutions in a secular democracy. Article 26 of the Constitution guarantees every religious denomination the right to manage its own affairs in matters of religion. The Supreme Court has distinguished, in its jurisprudence under Articles 25 and 26, between the "religious" aspects of religious institutions (which are protected from state regulation) and the "secular" or "administrative" aspects (which the state may regulate in the public interest).

This distinction is the constitutional foundation on which the Waqf Amendment Act's constitutionality will be assessed. The government's position is that the amendments address the secular aspects of waqf administration, such as the transparency of accounts, the accuracy of waqf records, and the prevention of fraudulent waqf claims, rather than the religious aspects. Critics argue that the provision allowing non-Muslim members to serve on waqf boards and tribunals crosses the line into the management of religious affairs that is protected by Article 26.

The broader constitutional significance of this controversy is that it represents the latest chapter in the long and contested history of state intervention in minority religious institutions in India. The pattern of intervention has not been even: the state has been more willing to regulate and reform Hindu religious institutions under Article 25(2)(b) than to impose comparable

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requirements on Muslim or Christian institutions, and the current period has seen this asymmetry intensify in ways that critics describe as the constitutional weaponization of regulatory power against minority communities.

8.3 The Uniform Civil Code: Constitutional Aspiration and Political Weaponization

Article 44 of the Constitution, which directs the state to "endeavor to secure for the citizens a uniform civil code throughout the territory of India," is the directive principle that has generated the most persistent and politically charged constitutional controversy in Indian history. The uniform civil code (UCC) was included in the directive principles as an expression of the secular constitutional ideal: that in a republic of equal citizens, the personal law governing marriage, divorce, inheritance, and adoption should not vary according to the religious community of the persons involved.

The argument for a UCC from the perspective of gender justice is substantial. The personal laws of all the major religious communities in India, as they have been codified and administered, contain provisions that discriminate against women: in inheritance, in divorce rights, in the validity of marriage, and in other matters of fundamental importance to women's lives. Hindu personal law has been progressively reformed through legislation, beginning with the Hindu Code Bills of the 1950s, though significant discriminatory provisions remain. Muslim personal law in India, governed largely by the Muslim Personal Law (Shariat) Application Act of 1937, has been subject to far less legislative reform, despite the Supreme Court's significant judgment in Shayara Bano v. Union of India (2017) which declared the practice of triple talaq unconstitutional.

But the UCC as a political project in the current environment is deeply complicated by its capture by the Hindu nationalist agenda. The demand for a UCC, in the BJP's political discourse, is articulated less as a demand for gender justice across all religious communities and more as a demand for the imposition on minority communities of legal norms derived from majority religious tradition. The Uttarakhand Uniform Civil Code Act of 2024, the first state-level UCC legislation in Indian history, has been criticized by legal scholars and women's rights organizations for codifying certain Hindu personal law norms as "uniform" law without genuinely consulting minority communities or addressing the gender discriminatory provisions of Hindu personal law with equal rigor.

A genuinely secular, gender-just UCC would be one that develops a code of personal law from constitutional principles of equality and dignity rather than from any religious tradition, that involves genuine consultative processes with all communities, that addresses the discriminatory provisions of all personal laws with equal rigor, and that provides for community representation in the development of the code. What India has been offered instead is the weaponization of the UCC demand as an instrument of communal politics, which is the opposite of the constitutional vision Article 44 embeds.

8.4 Minority Education Rights and the Constitutional Framework

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The constitutional protection of minority educational rights under Articles 29 and 30 has been the site of ongoing constitutional controversy. Article 30 guarantees minorities the right to establish and administer educational institutions of their choice, and Article 30(2) prohibits the state from discriminating against aided educational institutions on the ground that they are under the management of a religious or linguistic minority. These provisions were intended to protect the minority-run schools and colleges that had historically been important centers of minority cultural and educational identity.

The constitutional status of minority educational institutions, and specifically the question of whether the anti-reservation requirements imposed by the Supreme Court in T.M.A. Pai Foundation v. State of Karnataka (2002) and subsequent cases apply to minority institutions, has been the subject of extensive litigation. In Pramati Educational & Cultural Trust v. Union of India (2014), the Supreme Court held that the Right to Education Act's requirement of 25 percent reservation for economically disadvantaged children does not apply to unaided minority educational institutions. This judgment has protected the autonomy of minority institutions from reservation requirements imposed without their consent.

But the trajectory of constitutional interpretation in this area under the current political environment has been less supportive of minority educational autonomy. The tax treatment of minority institutions, the regulatory requirements imposed on them, the conditions attached to grants-in-aid, and the application of professional regulatory requirements, have all been areas in which minority educational institutions have faced increasing regulatory burden in ways that their counterparts in the majority religious tradition have not. The pattern is consistent with the broader argument of this textbook that the constitutional framework of minority protection is being progressively eroded through administrative and regulatory means that fall just short of direct constitutional violation.

CHAPTER NINE: THE POLICE, THE SECURITY STATE, AND THE CONSTITUTIONAL ANATOMY OF EVERYDAY OPPRESSION

9.1 The Police Act of 1861: A Colonial Institution in a Constitutional Republic

The chapter of this textbook that deals with the police must begin with the most fundamental observation: that the Indian police is governed by a law enacted by the British colonial government fourteen years before Queen Victoria's 1875 proclamation that India was "An Empire," in the immediate aftermath of the suppression of the 1857 uprising, with the explicit purpose of creating a force that would serve the interests of colonial domination rather than the interests of the people it policed. And that this law remains, as of 2026, the primary statute governing the organization, powers, and accountability of the police in the majority of Indian states.

The Police Act, 1861 is not merely an old law. It is a philosophically hostile law: hostile to the idea that the police exist to serve the public, hostile to the idea that the police are accountable to the communities they police, hostile to the idea that individuals have rights that the police are

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obligated to respect. It conceives of the police as an instrument of government order, and of the public as the object of that order, not as the sovereign in whose name the police operate.

This philosophy is embedded in the structure and text of the Act. The police is organized on hierarchical military lines, with command flowing downward from the state government through the Director General to the subordinate ranks. There is no mechanism for horizontal accountability to the communities the police serve. The Act gives police officers broad discretionary powers of arrest, search, and detention that are weakly constrained by judicial oversight. The Act's provisions on the accountability of police officers for misconduct are almost entirely internal, relying on departmental proceedings overseen by superior officers rather than by independent bodies.

The Supreme Court's 2006 directions in Prakash Singh v. Union of India have been described in previous parts of this textbook, and the failure of those directions to be implemented effectively has also been documented. What requires further analysis here is the constitutional significance of that failure.

When the Supreme Court issues directions requiring the government to implement specific institutional reforms, and when those directions go unimplemented for two decades, the constitutional diagnosis is one of a governance system that is structurally resistant to reform because the political class benefits from the unreformed system. The ability of state governments to use the police as an instrument of political control, to protect political allies from criminal investigation, to suppress political opposition through selective enforcement, and to exercise coercive power over economically vulnerable populations, is dependent on the police remaining organizationally subordinated to political authority.

9.2 Custodial Deaths, Encounter Killings, and the Constitutional Silence

The D.K. Basu v. State of West Bengal judgment of 1997 established a comprehensive set of procedural requirements for police arrest and detention, including requirements for the prompt production of the arrested person before a magistrate, for the maintaining of a custody register, for the informing of family members of the arrest, and for the examination of the arrested person by a doctor. These requirements were subsequently codified in the Code of Criminal Procedure and have been incorporated into the new Bharatiya Nagarik Suraksha Sanhita of 2023.

Despite these constitutional and statutory requirements, custodial deaths in India remain a serious and persistent problem. The National Human Rights Commission reported receiving thousands of complaints of custodial deaths annually, though the actual numbers are believed to be significantly higher because many custodial deaths are not reported or are misclassified as deaths by natural causes or suicide. The families of victims of custodial violence face enormous obstacles in pursuing legal accountability: police departments investigate complaints against their own personnel, witnesses are often afraid to testify, forensic evidence is frequently compromised, and the criminal justice system moves so slowly that the practical prospects of accountability are minimal.

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Encounter killings represent an even more extreme form of constitutional violation. The extrajudicial killing of persons by the police, presented as self-defense encounters, has been documented as a systematic practice in several Indian states. The Uttar Pradesh police's reported record of hundreds of encounter killings between 2017 and 2024 has attracted national and international attention and serious human rights concern. The National Human Rights Commission has registered cases and issued notices, but effective accountability has been elusive.

The constitutional framework's response to encounter killings is inadequate at multiple levels. Article 21's protection of the right to life is unambiguous: the state may deprive a person of life only through a procedure established by law that meets constitutional standards of fairness. An extrajudicial killing, regardless of how it is characterized, is a deprivation of life without any legal procedure and is therefore prima facie unconstitutional. But the systemic difficulty of establishing in court that a given encounter was not genuine self-defense, combined with the institutional solidarity of the police that makes internal investigation of suspicious encounters ineffective, has meant that the constitutional right to life is practically unenforceable against this form of state violence.

The new criminal codes of 2023 have extended police powers of detention and investigation in ways that critics argue further weaken procedural safeguards against custodial abuse. The challenges to expanded police powers under the new codes, which the Supreme Court is expected to address in a series of cases in 2026, as noted in the December 2025 reporting on the Supreme Court's docket, represent a critical constitutional frontier in the protection of individual liberty against state violence.

9.3 UAPA, AFSPA, and the Zones of Exception

The Armed Forces (Special Powers) Act, 1958 (AFSPA) is a statute that grants extraordinary powers to the armed forces deployed in "disturbed areas," including the power to arrest without warrant, to search any premises without warrant, and crucially, to use force to the extent of causing death "against any person who is acting in contravention of any law." The Act provides near-total immunity from prosecution for acts done under it: no prosecution can be brought against any army officer for acts done in a disturbed area under the AFSPA without the prior sanction of the Central government, which has in practice never been granted.

The AFSPA has been in continuous operation in Nagaland since 1958, in Manipur since 1980, and has been applied at various times to Jammu and Kashmir, Assam, and other northeastern states. In these territories, the Act has created what legal scholars call a "zone of exception," a geographic and legal space in which the ordinary constitutional framework of rights and accountability is suspended and replaced by the de facto discretion of military and paramilitary authority.

The constitutional validity of the AFSPA has been challenged multiple times before the Supreme Court. The Court upheld its constitutional validity in Naga People's Movement of Human Rights v. Union of India (1997), subject to certain procedural guidelines. But the guidelines have not prevented extensive human rights violations in AFSPA areas, including killings, torture, rape,

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and disappearances. The Extra-Judicial Execution Victim Families Association (EEVFAM) of Manipur documented over 1,500 alleged encounter killings in Manipur between 1979 and 2012, and filed a petition before the Supreme Court that resulted in the Court's direction in July 2016 that all encounter killings by the military in AFSPA areas should be subject to independent investigation.

The AFSPA represents, in a particularly concentrated and stark form, the broader constitutional problem this textbook has documented throughout: the use of colonial emergency legislation, formally authorized by constitutional provisions (specifically, the power to deploy the armed forces in aid of civil authority under Article 352 and related provisions), to create zones in which the constitutional rights of citizens are effectively suspended. The citizens living under AFSPA are not citizens in the constitutional sense. They are subjects of military administration with none of the protections that the Constitution purports to guarantee.

The withdrawal or significant reform of AFSPA has been recommended by multiple official committees and commissions, including the Justice Jeevan Reddy Commission in 2005, the Justice Santosh Hegde Commission in relation to Manipur, and various United Nations human rights bodies. The political resistance to withdrawal or reform has been intense, coming from the military establishment which regards AFSPA protections as essential to the conduct of counter-insurgency operations, and from political interests that regard the northeastern and Kashmir situations as security rather than constitutional governance problems.

CHAPTER TEN: THE POLITICAL ECONOMY OF CONSTITUTIONAL REFORM AND THE CONDITIONS FOR CHANGE

10.1 Who Benefits from the Status Quo? A Political Economy Analysis

Constitutional reform is not merely a technical legal project. It is a political project that must overcome the resistance of those who benefit from the existing constitutional order. Understanding the political economy of constitutional reform requires identifying, with clarity and without euphemism, who benefits from the specific features of the existing order that require reform.

The concentrated executive powers of the Prime Minister and the PMO benefit the party in power at the national level, which is currently the BJP. The anti-defection law benefits party leaderships of all parties, but most especially the governing party, by eliminating the risk of legislative desertion. The weak federal structure benefits the Centre at the expense of the states, but states controlled by the ruling party at the Centre benefit from selective enforcement of central fiscal and regulatory powers in their favor. The gubernatorial system benefits the ruling party at the Centre by giving it a political instrument in opposition-ruled states. The FPTP electoral system benefits the party with the most geographically efficient distribution of vote, which has historically been the BJP in the north and the regional parties in their respective states.

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The inadequacy of legal aid and constitutional remedies benefits those who can afford litigation: corporations, the wealthy, and organized civil society groups. The non-justiciability of social and economic rights benefits those who are not primarily dependent on state-provided social services: the middle and upper classes who can access private healthcare, education, housing, and transport. The weak enforcement of dalit and tribal rights benefits the dominant caste groups and economic interests that depend on the continued economic subordination of these communities. The AFSPA and UAPA benefit the state security apparatus and those political interests that prefer coercive management of dissent to political engagement with its causes.

This is a comprehensive and largely consistent list. The distribution of benefits from the existing constitutional order is not random: it systematically advantages those who are already powerful, those who control state institutions, and those whose social and economic position is protected by the existing distribution of law and social power. The distribution of costs from the existing constitutional order is equally systematic: it falls on the poor, the marginalized, the minority, the dissenting, and the excluded.

This structural analysis has a direct implication for the political economy of constitutional reform: the forces favoring fundamental constitutional reconstruction are the forces of the disadvantaged majority, while the forces opposing it are the forces of the privileged minority who control the existing state apparatus. The democratic arithmetic suggests that reform should be possible, because the disadvantaged majority is numerically much larger than the privileged minority. The political reality suggests that reform is very difficult, because the disadvantaged majority is also the most poorly organized, the least resourced, and the most vulnerable to the coercive instruments that the existing order places in the hands of those who oppose reform.

10.2 The History of Constitutional Reform Movements in India

The constitutional reform movements in India have a longer and richer history than is generally acknowledged in the mainstream academic literature. The demand for constitutional transformation predates independence: Gandhi's experiments with the non-cooperation movement and with the idea of village-based self-governance (Gram Swaraj) represented a demand for a constitutional order fundamentally different from the colonial administrative model that the Constituent Assembly ultimately adopted. Ambedkar's consistent advocacy for the constitutional protection of dalit rights, and his increasing despair in the later years of his life at the failure of the Constitution to deliver on its promise to the untouchable communities, represents both a constitutional critique and a reform movement.

In the post-independence period, the organized demands for constitutional reform have come from multiple directions. The Naxalite movement, which emerged in 1967 in Naxalbari, West Bengal, was in part a response to the failure of the constitutional order to deliver land reform and economic justice to the rural poor. The Emergency of 1975-1977 and the subsequent Janata period saw significant constitutional reform debate, though the Forty-Fourth Amendment that resulted from this period was, as noted, partial and inadequate. The Mandal Commission controversy of 1990, and the subsequent political and constitutional developments around reservations for OBCs, represented a constitutional reform movement of the backward class communities demanding effective representation and substantive equality.

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The environmental movement, which has consistently challenged the constitutional framework for development-induced displacement, has contributed significantly to the expansion of constitutional rights jurisprudence, particularly through the Supreme Court's recognition of environmental rights under Article 21. The farmers' movement of 2020-2021, which resulted in the repeal of the three farm laws, was in significant measure a constitutional movement: a challenge to the Centre's authority to legislate on agricultural matters without the consent of the states, grounded in the constitutional framework of federalism and the agricultural provisions of the State List.

The most recent and significant constitutional reform movement has been the political mobilization around the question of democratic backsliding. The opposition INDIA alliance that contested the 2024 elections, the civil society organizations that have challenged the electoral bond scheme, the UAPA, the CAA, and the abrogation of Article 370, the academics and journalists who have documented and analyzed the erosion of institutional independence, these represent the contemporary constitutional reform movement in its distributed and plural form.

10.3 International Dimensions: The Global Constitutional Reform Debate and India's Position

The global debate about constitutional democracy, its vulnerabilities, and the conditions for its survival has reached a new intensity in the period 2024-2026. The democratic backsliding documented in India, Hungary, Turkey, Poland, Brazil under Bolsonaro, the United States under Trump, and numerous other countries has generated a global academic and policy literature on the mechanics of democratic erosion and the conditions for democratic resilience that is directly relevant to the Indian constitutional reform argument.

Tom Ginsburg and Aziz Huq's influential 2018 book "How to Lose a Constitutional Democracy," which documented the mechanisms of "constitutional retrogression," the gradual erosion of democratic norms and institutions through formally legal means, has been supplemented by an expanding literature on the specific mechanisms of executive aggrandizement, party-state fusion, and the erosion of institutional independence. Tarunabh Khaitan's concept of "killing a constitution with a thousand cuts," developed in the Indian context and published in Law and Ethics of Human Rights in 2020, has been widely cited in the global democratic backsliding literature.

The V-Dem Democracy Report 2025 continues to rank India in the "electoral autocracy" category, noting that while elections remain competitive, the conditions for genuine electoral competition (freedom of the press, freedom of association, civil society space, and institutional independence) have continued to deteriorate. The Freedom House Freedom in the World 2026 report, which describes India as "Partly Free," documents continued concerns about the treatment of journalists, activists, and minority communities, about the use of the judiciary and law enforcement agencies as instruments of political control, and about the erosion of independent institutions.

The Cambridge University Press volume "Global Challenges to Democracy: Backsliding in India," published in May 2025, provides the most comprehensive recent comparative analysis of

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India's democratic situation, situating it within the global pattern of democratic backsliding while also identifying the specific institutional and historical factors that make the Indian situation distinctive. The chapter on the sociocultural components of democratic backsliding, published in the Asian Studies Review in June 2025, analyzes how the erosion of constitutional norms is accompanied and enabled by changes in the cultural and social environment that normalize authoritarian behavior and delegitimize constitutional opposition.

These international assessments are not merely external observations. They are based on empirical evidence of constitutional failure that is directly relevant to the reform argument of this textbook. The connection between constitutional design failures and democratic backsliding is not coincidental. The constitutional provisions that concentrate executive power, that weaken institutional independence, that marginalize minority communities, and that fail to deliver substantive rights to the poor, create the conditions in which democratic erosion can occur because they deprive the democratic system of the institutional resilience that would allow it to resist the concentrated power of a determined majoritarian movement.

10.4 Civil Society, Popular Constitutionalism, and the Movement for Constitutional Change

The constitutional reform project cannot be a project of constitutional scholars and legal academics alone. It must be a project of the people for whom constitutional justice is not an academic question but a matter of daily survival and dignity. The most important constitutional reform movements in India's history have been popular movements: the independence movement, the anti-Emergency mobilization, the backward class movements, the farmers' protests, the environmental justice movements, the dalit assertion movements. The constitutional reform argument of this textbook finds its political home in these movements, not in the seminar rooms of law schools or the chambers of the Supreme Court, important as those spaces are.

Popular constitutionalism, the idea that the meaning of the Constitution is contested and developed not only by the courts and the legislature but by the people themselves through their political and social struggles, is not a foreign theoretical concept. It is a description of Indian constitutional history. The meaning of Article 17 (abolition of untouchability) has been contested and developed through the struggles of dalit communities and organizations for over seven decades. The meaning of Article 21 (right to life) has been expanded through the struggles of the homeless, the displaced, the environmentally affected, and the labor movements. The meaning of Article 19(1)(a) (freedom of speech) has been defended through the struggles of journalists, activists, and ordinary citizens who have refused to be silenced.

The popular constitutional reform movement of the current period is constituted by multiple overlapping struggles that are increasingly connected by a shared constitutional diagnosis: that the Indian constitutional order, in its current form, is not serving the Indian people and that fundamental reform is necessary. The student movement, the farmers' movement, the dalit assertion represented by organizations like Bhim Army, the Muslim community's constitutional resistance to the CAA, the LGBTQ+ community's continued constitutional struggle for equal rights and dignity, the environmental justice movements, the labor rights movements of gig workers and informal workers, these are the components of a popular constitutional reform

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coalition that is not yet fully articulated as such but whose constituent elements are increasingly conscious of the constitutional dimensions of their struggles.

The political conditions for constitutional reform are therefore not absent. They are present in the form of the largest democratic majority in the world: the majority of Indian citizens who are poor, who are marginalized by caste or religion or gender or ethnicity or class, who are victimized by the existing constitutional order's failure to deliver justice, and who have the democratic numbers to demand and achieve a constitutional order genuinely designed for their liberation.

What this majority lacks is not the numbers or the grievances but the organization, the political representation, and the constitutional vision that would allow it to act effectively as a constituent power. The work of constitutional scholars, legal academics, and democratic activists is precisely to contribute to the development of that vision, to articulate in clear and accessible terms what a genuinely just and democratic constitutional order would look like, so that the popular demand for constitutional change has a form and direction that can be translated into political action.

CHAPTER ELEVEN: THE BRITISH CONSTITUTIONAL INHERITANCE REEXAMINED: FROM MISUSE TO NECESSITY OF EMANCIPATION

11.1 The Myth of Constitutional Gift and the Reality of Colonial Design

Every standard account of the Indian Constitution acknowledges the colonial inheritance from the Government of India Act, 1935. What the standard accounts rarely do is examine with sufficient rigor the question of whether this inheritance was accidental, pragmatic, or deliberate in ways that served continuing British interests even after formal independence.

The argument of this chapter is that the British constitutional inheritance in India was not merely a pragmatic borrowing by framers who lacked the time or knowledge to design something better. It was, at a deeper level, a conscious or semiconscious reproduction of the structural logic of colonial administration, driven partly by the educational formation of the framers, partly by the institutional interests of the ICS bureaucracy that would implement the Constitution, and partly by the genuine belief, held by Nehru and others, that the colonial administrative state was a modernizing force that India needed to retain in order to achieve its developmental goals.

This belief was itself a colonial belief. It reproduced the colonial ideology that the central administrative state, organized on British bureaucratic lines, was the instrument of progress and that indigenous forms of governance, whether Gandhian village self-governance or the more radical forms of workers' control and peasant self-organization that some left forces in the Constituent Assembly advocated, were forms of backwardness that progress required transcending. The colonial inheritance in the Indian Constitution was therefore not merely textual. It was ideological.

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The ideological inheritance expressed itself in specific constitutional choices: the choice to make the administrative state, rather than the citizen, the primary actor of constitutional governance; the choice to make fundamental rights negative rather than positive, protecting citizens from the state rather than empowering them to use the state; the choice to make the Directive Principles non-justiciable, leaving social and economic transformation to the discretion of the state rather than making it an enforceable constitutional obligation; the choice to create a federal structure that kept the states in a position of fiscal and administrative subordination to the Centre; and the choice to retain colonial-era laws and institutions, including the police, the civil service, and the preventive detention framework, that were designed for colonial administration rather than for the governance of a self-determining people.

11.2 The Indian Civil Service and the Constitutional Administrative State

The Indian Administrative Service, the successor to the Indian Civil Service of the colonial period, is a constitutional institution: Article 312 authorizes Parliament to create "all-India services" and the IAS is established pursuant to this authority. The IAS officers are recruited through a competitive examination conducted by the Union Public Service Commission, a constitutional body established under Article 315, and serve in both central and state governments on a cadre-based system that gives the central government significant influence over the posting and transfer of senior state-level administrators.

The constitutional architecture of the IAS has preserved, with modifications of form but not of substance, the colonial administrative philosophy of the Indian Civil Service. The ICS was designed to be an elite, highly educated corps of administrators who would govern India on behalf of the colonial power, with loyalty to the imperial government, insulation from local political accountability, and the exercise of broad discretionary authority in the administration of territory and population. The IAS has, in significant respects, reproduced this administrative philosophy: it remains an elite corps that is recruited through a highly competitive examination, that is insulated from local political accountability by the security of tenure and cadre systems, and that exercises broad discretionary authority in the administration of state functions.

The constitutional problem with this administrative architecture is not that it fails to recruit competent administrators, though the IAS examination has been criticized for selecting for a specific kind of bookish competence rather than for the practical skills of public administration. The constitutional problem is that it creates an administrative apparatus that is accountable upward, to the hierarchy of the administrative and political system, rather than downward, to the citizens it is supposed to serve. An IAS officer who administers a district, a state government department, or a central ministry is accountable to her or his superior officers and to the minister of the department. She or he is not constitutionally accountable to the citizens of the district or department she or he serves, cannot be removed by the citizens for failure of service, and has no constitutional obligation to consult with or inform citizens about the exercise of administrative authority over them.

This upward accountability creates a permanent structural alignment of the administrative apparatus with political authority rather than with citizen interests. The administrative state that the British built in India, and that the Indian Constitution has perpetuated, is a state that governs

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for the benefit of those who control the state rather than for the benefit of those who are governed. This is, at its most fundamental, the constitutional problem of India.

11.3 How the Constitution Has Been Used Against the People: A Systematic Account

The title of this textbook promises an examination of how the constitutional law has been used against the people. The preceding chapters have provided extensive evidence of this pattern. This section assembles that evidence into a systematic account organized by the mechanisms of constitutional weaponization.

The first mechanism is the use of constitutional emergency and security powers against political opponents and democratic activists. The Constituent Assembly debates show that Ambedkar defended the retention of preventive detention by arguing that it was necessary to deal with genuine threats to national security. In practice, preventive detention under the National Security Act, the Public Safety Act, the UAPA, and their predecessors has been used to imprison labor organizers, student leaders, tribal activists, journalists, academics, and ordinary citizens who have engaged in political activity that the state found inconvenient. The mechanism is constitutional: Article 22 authorizes preventive detention within specified procedural limits. The use is anti-constitutional: it suppresses the very political activity that the freedom of speech and association guarantees of Article 19 are supposed to protect.

The second mechanism is the use of constitutional administrative powers to deprive the poor and marginalized of their livelihoods, homes, and access to common resources. The power of eminent domain, exercised under Article 300A and enabling legislation, has been used to displace millions of people from their lands for development projects that benefit primarily corporate and state interests. The management of forests under the Indian Forest Act and its successors has been used to criminalize the customary livelihood practices of tribal and forest-dwelling communities. The management of urban land under the Urban Land (Ceiling and Regulation) Act and similar legislation has been used to demolish slums and informal settlements, evicting the urban poor from the only housing available to them.

The third mechanism is the use of constitutional legislative powers to enact laws that protect the interests of the wealthy at the expense of the poor. The corporate bankruptcy framework established by the Insolvency and Bankruptcy Code, while necessary for the functioning of the financial system, has been criticized for creating a mechanism through which promoters can evade personal liability for the debts of their corporations in ways that socialize losses while privatizing gains. The electoral finance framework, particularly the electoral bond scheme that the Supreme Court struck down in February 2024, created a mechanism through which large corporations could provide enormous sums of money to ruling parties in exchange for regulatory and policy favors, with the constitutional cover of anonymity and legality.

The fourth mechanism is the use of constitutional administrative and regulatory powers to suppress independent journalism and civil society. The registration requirements for foreign NGOs under the Foreign Contribution (Regulation) Act (FCRA), which has been amended multiple times in ways that progressively restrict civil society's access to foreign funding and increase the government's control over civil society activity, represent the use of constitutional

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legislative power to create a regulatory framework that serves primarily to suppress organizations that the government finds politically inconvenient. Multiple prominent civil society organizations, including Amnesty International India and human rights organizations, have had their FCRA registrations cancelled in circumstances that their leadership and international human rights bodies describe as politically motivated.

The fifth mechanism, perhaps the most insidious, is the constitutional normalization of social and economic inequality through the failure to enforce constitutional obligations of non-discrimination and equal treatment. Article 17 abolishes untouchability. Article 15 prohibits discrimination on grounds of caste. Article 23 prohibits forced labor and trafficking in persons. These are absolute constitutional prohibitions, not merely directive principles or aspirational goals. And yet untouchability is practiced, caste discrimination is endemic, and forced labor in various forms continues throughout India, and the constitutional machinery is not engaged to address these violations because addressing them would require challenging the economic and social interests of groups that have political power.

11.4 The Case for Breaking with the Colonial Constitutional Tradition

The case for a genuinely new constitutional order for India, one that breaks decisively with the colonial constitutional tradition rather than reforming it at the margins, rests ultimately on the accumulated evidence that reform within the existing framework has proven insufficient. Seventy-five years of amendments, judicial interpretations, and legislative reforms have produced a constitutional order that is significantly better than the Government of India Act, 1935 in many respects: the formal guarantee of fundamental rights, the constitutional status of democratic elections, the provision for judicial review, the framework of constitutional institutions including the Election Commission and the Supreme Court, these are genuine achievements that were not present in the colonial framework.

But the accumulated evidence equally demonstrates that seventy-five years of reform within the framework have not been sufficient to deliver constitutional justice to the majority of India's people. The poor are still denied access to constitutional remedies. The marginalized are still systematically victimized by state institutions that were designed for their subordination. The minority communities are still at the mercy of a majoritarian constitutional politics that treats minority rights as a political concession rather than as an unconditional constitutional guarantee. The federal units are still subject to the systematic subordination of their autonomy by a Centre whose powers are constitutionally structured on colonial administrative lines.

The argument for breaking with the colonial constitutional tradition is therefore not the argument of nihilism or despair. It is the argument of constitutional maturity: the recognition that a people who have lived under a constitutional order for three-quarters of a century are entitled to ask whether that order has served them well enough, and if not, to demand something better. The recognition that "better" is achievable because we now have seventy-five years of evidence about what has failed and why, and because we have the comparative constitutional experience of dozens of other countries that have found better solutions to many of the problems that the Indian constitutional framework has failed to solve.

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CHAPTER TWELVE: THEORIES OF CONSTITUTIONAL TRANSFORMATION AND THEIR APPLICATION TO INDIA

12.1 Constitutional Moments, Constituent Power, and the Theory of Democratic Founding

The theoretical framework for understanding constitutional transformation in democratic societies draws on a rich body of scholarship that has developed substantially in the past three decades. Bruce Ackerman's theory of "constitutional moments," developed in the context of American constitutional history, argues that genuine constitutional change occurs not only through the formal amendment procedures but through critical political moments in which "We the People" engage in extraordinary politics and succeed in transforming the constitutional order outside or alongside the normal legislative channels. Ackerman's theory identifies three such moments in American history: the founding, Reconstruction, and the New Deal. Applying this framework to India, one might identify 1950 (the founding), 1975-1977 (the Emergency and its reversal), and the current moment, as potential constitutional moments of transformative significance.

Hannah Arendt's theory of constituent power, developed in "On Revolution," emphasizes the distinction between the "public happiness" of genuine political participation in founding moments and the "private happiness" of everyday life under an established constitutional order. Arendt's insight is that the vitality of republican constitutionalism depends on maintaining a connection to the founding act of self-constitution, and that constitutional orders that drift too far from this founding vitality become bureaucratic and self-sustaining in ways that lose touch with the democratic energy from which they derive their legitimacy.

Applied to India, Arendt's framework suggests that the constitutional order has lost its connection to the founding democratic energy of the independence movement, in which Gandhian mass participation, Ambedkarite constitutional vision, socialist economic aspiration, and the sheer force of an anti-colonial popular mobilization came together to create a genuine constituent moment. The Constitution that resulted from that moment was, as this textbook has argued, an imperfect product that reflected the class interests and colonial intellectual formation of the framers as much as the democratic aspirations of the people. But the founding democratic energy has not been lost. It has found expression in the successive movements of democratic assertion, from the dalit movement through the environmental movement to the farmers' protests, that have kept alive the aspiration for a constitutional order genuinely serving the people.

Jacques Derrida's philosophical analysis of the "force of law," his examination of the violence that establishes and maintains legal order, is relevant to the Indian constitutional situation because it helps illuminate why constitutional reform requires not merely legal argument but political struggle. Derrida's insight is that every legal order is established through an originary act of power that precedes and constitutes the legal framework itself. The constitutional order cannot justify itself by reference to itself, cannot derive its authority from the procedures it establishes, because those procedures are themselves the product of the founding act of power. Constitutional legitimacy is therefore always in question, always contestable, always dependent

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on the ongoing re-affirmation or rejection of the founding act by those who live under the order it created.

This insight is directly applicable to the Indian Constitution's claim to authority derived from "We, the People of India." As Part Two of this textbook argued, the constituent assembly that drafted the Constitution was not elected by universal suffrage and did not represent the full diversity of the Indian people. The Constitution's claim to popular constituent authority is therefore historically contestable, and its ongoing legitimacy depends on the degree to which the constitutional order actually serves the people in whose name it claims authority. A constitutional order that systematically fails the majority of the people for whom it purports to speak cannot indefinitely sustain the claim of popular constituent authority.

12.2 The Post-Colonial Constitutional Theory and India's Specific Situation

Postcolonial constitutional theory, developed by scholars including Upendra Baxi, Partha Chatterjee, Achille Mbembe, Boaventura de Sousa Santos, and more recently by the contributors to the emerging field of Third World Approaches to International Law (TWAIL), provides a theoretical framework for understanding the constitutional predicament of formerly colonized societies that is specifically relevant to India.

Upendra Baxi's concept of "the future of human rights" locates the development of human rights in the struggles of the "suffering social formations," the poor, the marginalized, and the excluded, rather than in the deliberations of international bodies or the decisions of constitutional courts. Baxi's framework is directly relevant to the Indian constitutional reform argument because it insists that the legitimacy of a constitutional order's rights framework must be assessed not by reference to the elegance of its textual formulations but by reference to its effectiveness in protecting the rights of those most in need of protection.

Partha Chatterjee's distinction between "civil society" and "political society" in the Indian context is relevant to the political economy of constitutional reform. Chatterjee argues that the majority of India's poor engage with the state not through the formal mechanisms of civil society, as citizens with rights enforced through law, but through "political society," as populations managed by governmental programs in exchange for political support. This distinction captures something important about the constitutional predicament of India's poor: they are formally citizens with constitutional rights, but their practical engagement with the state is mediated by patron-client relationships and by the politics of governmental programs rather than by the constitutional framework of rights and remedies.

Santos's epistemology of the South, which demands that legitimate knowledge production begins from the experiences of the global South rather than from the conceptual frameworks of the global North, has implications for the constitutional reform project. A genuinely post-colonial constitutional order for India should not be designed primarily by reference to the constitutional models of the global North, whether the United States, Germany, or South Africa, however relevant these comparative experiences are. It should be designed primarily by reference to the specific historical, cultural, and social experiences of India's people, and particularly of the people who have been most systematically marginalized by the existing constitutional order.

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This epistemological demand does not mean ignoring comparative constitutional experience. It means approaching that experience from a position of critical selectivity: taking what is useful, adapting it to the Indian context, and rejecting what is not compatible with the specific requirements of a constitutional order for a society with India's particular history and social formations.

12.3 Rawlsian Justice, the Veil of Ignorance, and the Constitution India Should Have

John Rawls's theory of justice, particularly the "original position" and "veil of ignorance" thought experiment developed in "A Theory of Justice" (1971), provides a powerful framework for assessing the justice of constitutional arrangements. The original position is a hypothetical situation in which rational persons choose the principles of justice that will govern their society without knowing their own position in that society: their natural talents, their social class, their gender, their caste, their religion, their ethnicity. From behind the "veil of ignorance," rational persons would choose constitutional arrangements that protect the interests of the least advantaged, because not knowing their own position they cannot rationally risk being among the worst off under arrangements that serve the interests of the best off.

Applying the Rawlsian framework to the Indian Constitution reveals a deep injustice. The Constitution that was actually chosen was chosen by individuals who knew their position in Indian society: they were the educated, urban, professionally qualified members of the nationalist elite. They chose constitutional arrangements that, while more democratic and rights-protective than the colonial framework, systematically protected their own interests through non-justiciable social and economic rights, weak enforcement of anti-discrimination provisions in the private sphere, a legal system accessible primarily to those with the resources to use it, and a federal structure in which the administrative centre they controlled was paramount.

A constitution chosen from behind the veil of ignorance, by rational persons who did not know whether they would be born dalit or forward caste, Muslim or Hindu, rural poor or urban middle class, woman or man, tribal or upper-caste, would look very different. It would make social and economic rights justiciable because a person who might be born into poverty would not rationally accept a constitution that left her survival dependent on the goodwill of the state. It would make anti-discrimination law effective and enforceable in both public and private spheres because a person who might be born into a caste-marginalized family would not rationally accept the existing framework of constitutional prohibition without effective remedy. It would create a genuinely federal system with adequate resources at every level of governance because a person who might be born into a marginalized rural community would not rationally accept a system in which the political and administrative centre was remote and effectively unaccountable.

This Rawlsian analysis converges with the Ambedkarite, postcolonial, and critical legal analysis to support the same conclusion: the Constitution that India has is not the constitution that India would have chosen if the choices had genuinely reflected the interests of the whole people rather than the interests of the powerful minority. And the argument for constitutional reconstruction is precisely the argument for a second chance at a genuine social contract: one in which the full diversity of India's people participates in designing the constitutional framework under which they will live.

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12.4 The Republican Tradition and Constitutional Non-Domination

Philip Pettit's republican theory of freedom, developed in "Republicanism: A Theory of Freedom and Government" (1997) and "On the People's Terms: A Republican Theory and Model of Democracy" (2012), offers a third theoretical framework, alongside the Rawlsian and the postcolonial, that is directly relevant to the Indian constitutional reform argument.

Pettit distinguishes between freedom as "non-interference" (the liberal conception) and freedom as "non-domination" (the republican conception). Non-interference means merely the absence of actual interference in one's choices. Non-domination means the absence of arbitrary power over one's choices: the condition in which no other person or institution has the capacity to interfere arbitrarily with one's conduct, whether or not they actually choose to do so at any given moment.

The distinction is crucial for the Indian constitutional analysis because the Indian constitutional order, in its current form, allows the powerful to dominate the powerless even without constant interference. The landlord who knows that the agricultural laborer has no legal recourse, no alternative employer, and no access to justice dominates the laborer even if she does not constantly exercise her power. The state that knows that a tribal community cannot effectively resist the displacement it has been subjected to dominates that community even when it formally complies with the procedural requirements of the Land Acquisition Act. The party in power that knows that the Governor it has appointed will use constitutional powers to serve its political interests dominates the opposition-ruled state even between the occasions of actual gubernatorial interference.

The republican theory of non-domination requires that constitutional arrangements be designed not merely to prevent actual interference with citizens' choices but to eliminate the arbitrary power that makes domination possible. This requires enforceable rights rather than merely formal guarantees, independent institutions rather than merely formal independence, genuine access to justice rather than merely the formal existence of courts, and a federal structure that provides genuine resources and autonomy to subnational governments rather than merely formal constitutional recognition of their existence.

The republican diagnosis of the Indian constitutional order is that it creates, in both the public and the private spheres, extensive conditions of domination for the majority of citizens. The poor are dominated by the state that can evict them, tax them, imprison them without trial, and deprive them of livelihoods, without effective constitutional recourse. Women are dominated by family law frameworks that give male relatives extensive powers over their choices. Dalits are dominated by caste hierarchies that the state has constitutional obligations to eliminate but has chosen not to enforce. Minority communities are dominated by a majoritarian constitutional politics that threatens to convert constitutional equality into an instrument of communal hierarchy.

The republican constitutional program for India is therefore not merely a list of specific constitutional reforms. It is a fundamental reconception of what the constitutional order is for: not for the organization of state power, which has been the primary function of the Indian Constitution, but for the elimination of domination in all its forms, public and private, legal and

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social, economic and political. This reconception is, in the deepest sense, what a genuinely post-colonial constitutional order for India would look like.

CHAPTER THIRTEEN: RECENT JURISPRUDENTIAL AND THEORETICAL DEVELOPMENTS (2024-2026) AND THEIR CONSTITUTIONAL SIGNIFICANCE

13.1 The Supreme Court in 2025: A Year of Constitutional Reckoning

The Supreme Court's jurisprudence in 2025 represented, as the extensive reporting and analysis in legal publications has documented, a year in which the Court simultaneously advanced and retreated on constitutional questions of fundamental importance. The BW Legal World assessment of the top Supreme Court judgments of 2025 noted that the Court addressed questions cutting across arbitration, insolvency, environmental protection, legislative accountability, judicial appointments, minority rights, and gender justice, and that rather than issuing isolated rulings, the Court used these cases to clarify institutional roles and constitutional limits.

The Madras Bar Association v. Union of India judgment of 2025, which struck down the Tribunals Reforms Act for re-enacting provisions already declared unconstitutional, is particularly significant for the constitutional reform argument. The Court's finding that the Act represented "a legislative override in the strictest sense" and violated the basic structure principle of judicial independence establishes the important constitutional principle that the legislature cannot persist in unconstitutional behavior merely by re-enacting it with minor modifications. This is relevant not only to tribunal law but to the broader pattern, documented throughout this textbook, of the executive using legislative re-enactment to circumvent judicial constitutional rulings.

The Rejanish K.V. v. K. Deepa judgment clarifying the scope of Article 233 on judicial appointments has contributed to the ongoing constitutional conversation about the balance between judicial independence and democratic accountability in the appointment of the judiciary. The clarification that eligibility for direct recruitment as District Judges does not depend on current advocate status is a minor doctrinal clarification, but it is significant in the broader context of the argument that the criteria for judicial appointments should be reformed to promote a more diverse and representative judiciary.

The constitutional development of "reasonable accommodation" as a mandatory obligation under the Transgender Persons (Protection of Rights) Act, read in conjunction with Article 14, represents a significant advance in the substantive equality jurisprudence. The Court's recognition that the duty of reasonable accommodation applies horizontally to both state and non-state actors, effectively binding private institutions to constitutional equality norms through the statutory route, is a jurisprudential development with substantial potential. It suggests a path toward greater constitutional accountability of private actors for discrimination that the constitution does not itself clearly address.

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13.2 The Election Commissioner Appointment Case: Institutional Independence on Trial

The challenge to the Chief Election Commissioner and Other Election Commissioners (Appointment, Conditions of Service and Term of Office) Act of 2023 is, as of early 2026, one of the most constitutionally significant cases before the Supreme Court. The Act was enacted in response to the Supreme Court's judgment in Anoop Baranwal v. Union of India (2023), which directed that Election Commissioners be appointed by a committee including the Prime Minister, the Leader of the Opposition, and the Chief Justice of India, on the ground that the appointment process for Election Commissioners must be independent of the executive to protect the constitutional independence of the election machinery.

The government's legislative response was to constitute a committee that excluded the Chief Justice of India and replaced the CJI with a Cabinet Minister appointed by the Prime Minister, effectively giving the executive a permanent majority on the selection committee. The challenge to this Act argues that by deliberately excluding the CJI and designing the committee to ensure executive control, the legislature has violated the constitutional principle of independent appointment that the Supreme Court's Anoop Baranwal judgment was intended to protect.

This case raises fundamental questions about the relationship between the Supreme Court's constitutional interpretations and Parliament's legislative authority. The government's position, broadly, is that the Anoop Baranwal judgment exceeded the Court's legitimate constitutional interpretive role, that the Constitution's silence on the election commissioner appointment process leaves it to parliamentary legislation, and that the Court cannot dictate the composition of a statutory appointment committee. The challenge's position is that the basic structure doctrine's protection of "free and fair elections" and institutional independence requires that the appointment of election commissioners be genuinely independent of the executive, and that a committee dominated by the executive does not meet this constitutional requirement regardless of its formal statutory authorization.

The outcome of this case will be a significant indicator of the current Supreme Court's willingness to enforce constitutional limits on executive action even when doing so requires confronting a government that has shown willingness to use its legislative majority to override judicial constitutional interpretations.

13.3 The Sabarimala Rehearing: Religion, Gender, and Constitutional Adjudication

The nine-judge bench hearing of the Sabarimala case in April 2026 represents the most significant ongoing examination of the relationship between religious freedom, equality, and constitutional adjudication in recent Indian constitutional history. The bench is grappling with fundamental questions about the scope of the "essential religious practices" doctrine, about the relationship between Article 25 (individual freedom of religion) and Article 26 (collective religious institutional autonomy), and about the limits of the state's power to reform religious practices in the name of constitutional equality.

The arguments reported in April 2026 hearings reveal the full complexity of the constitutional questions. Senior advocate Abhishek Manu Singhvi's argument, on behalf of the Travancore

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Devaswom Board, that the essential religious practices doctrine allows courts to define what is essential to a religion and thereby to override religious communities' own understanding of their practices, raises a genuine constitutional concern about judicial overreach in matters of religious doctrine. Justice Joymalya Bagchi's question about whether essential religious practices are beyond legislative change articulates the counter-concern that an overly broad protection of religious practices from legislative reform could insulate discriminatory practices from constitutional equality requirements indefinitely.

This tension between religious liberty and constitutional equality, between the rights of religious communities to define their own practices and the rights of individuals within those communities to equality and non-discrimination, is one that constitutional systems around the world have struggled to resolve. The Indian constitutional framework, with its complex structure of Articles 25, 26, 15, and 17, creates more constitutional resources for addressing this tension than many other systems, but also more constitutional ambiguity about how the tension is to be resolved.

What the Sabarimala rehearing and the Waqf Amendment challenge together illuminate is a pattern of constitutional adjudication in which the highest court is being asked, repeatedly and in rapid succession, to adjudicate foundational questions about the relationship between religious communities, the state, and the constitutional framework of individual rights, in an environment of intense political polarization and deliberate majoritarianism. The Court's capacity to maintain principled constitutional analysis in this environment, rather than becoming an instrument of the majoritarian political project, is a critical test of Indian constitutionalism in the current moment.

13.4 The Freedom House and V-Dem Assessments: Constitutional Failure Quantified

The Freedom House Freedom in the World 2026 report's continued classification of India as "Partly Free" and the V-Dem Democracy Report 2025's continued classification of India as an "electoral autocracy" provide the most systematic and internationally recognized quantification of the constitutional failures that this textbook has documented at length. The Wire's reporting on the Freedom in the World 2026 report notes that the report identifies several instances of executive maneuvering and implementation of statutes that catalyze democratic backsliding, sustaining India's "Partly Free" classification.

These external assessments are important for two reasons. First, they provide empirical validation of the constitutional critique advanced in this textbook, demonstrating that the argument is not merely a partisan political critique but reflects internationally recognized standards of democratic and constitutional governance. Second, they situate India's constitutional predicament within the global pattern of democratic backsliding, demonstrating that the Indian situation is both specific to India's constitutional design and part of a broader global phenomenon of authoritarian populism exploiting constitutional structures designed without adequate protections against their abuse.

The V-Dem methodology is particularly relevant because it assesses multiple dimensions of democratic quality, not merely electoral competitiveness. The fact that India scores relatively well on electoral competitiveness (elections are held regularly and are not manifestly fraudulent) but poorly on the deliberative and egalitarian dimensions of democracy (the quality of public

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deliberation, the degree to which democratic processes genuinely protect the interests of all citizens including the marginalized) reflects precisely the constitutional failure that this textbook has analyzed: a formal democratic structure that maintains the appearance of electoral legitimacy while systematically failing to deliver the substantive equality and genuine accountability that constitutional democracy requires.

CHAPTER FOURTEEN: PATHWAYS TO CONSTITUTIONAL RECONSTRUCTION

14.1 The Constitutional Amendment Route: Possibilities and Limitations

Article 368 of the Constitution specifies two procedures for constitutional amendment. Most provisions can be amended by a bill passed by a special majority of both houses of Parliament (a majority of the total membership of each house, and a majority of at least two-thirds of the members present and voting). Provisions relating to the federal structure, including the distribution of legislative powers, the representation of states in Parliament, and the provisions relating to the Supreme Court, also require ratification by the legislatures of at least half of the states.

The amendment route has been used 106 times (as of 2025), with several major constitutional transformations achieved through the amendment process: the abolition of the right to property as a fundamental right, the constitutionalization of panchayati raj, the insertion of the Tenth Schedule, the Ninety-Seventh Amendment on cooperative societies, and the Hundred and First Amendment introducing the GST. The amendment route is therefore not merely theoretical. It has been used for genuinely significant constitutional changes.

But the amendment route has limitations that make it insufficient for the scale of reform that this textbook argues is necessary. First, many of the most important reforms required, such as the abolition of the anti-defection law, the reform of the Governor's office, the change of the electoral system, and the creation of genuinely independent institutional appointment mechanisms, would require constitutional amendments that the ruling party would oppose because they would reduce its ability to consolidate and exercise power. Without the support of the ruling party, which commands the parliamentary majority required for constitutional amendment, fundamental reform through the amendment route is politically impossible in normal legislative circumstances.

Second, the basic structure doctrine constrains the amendment route by preventing amendments that would abrogate the basic structure of the Constitution, even if they command the required supermajority. The basic structure doctrine protects certain constitutional essentials from amendment, but it also, paradoxically, protects the status quo arrangements in areas where they have been incorporated into the basic structure through judicial interpretation, even when those arrangements require reform. The NJAC judgment is the clearest example of this problem: the collegium system, which is itself not an expression of genuine constitutional principle, has been protected from legislative reform by the basic structure doctrine.

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Third, the amendment route is slow, subject to political bargaining, and produces piecemeal changes that may not add up to a coherent constitutional transformation. The experience of seventy-five years of constitutional amendments demonstrates that piecemeal amendment consistently fails to address the structural problems of the constitutional framework because those structural problems reflect the distribution of political power that controls the amendment process.

14.2 The New Constitutional Founding: Procedural Requirements for Legitimacy

The argument for a new constitutional founding, a genuinely constituent process that produces a new constitution rather than further amendments to the existing one, rests ultimately on the diagnosis that the structural problems of the existing constitution require structural remedies that the amendment process cannot provide. This argument was made in Part Five of this textbook and is reinforced by the analysis of the preceding chapters of Part Six.

But the argument for a new constitutional founding must be accompanied by a rigorous account of the procedural requirements for such a founding to be genuinely legitimate. A new constitutional founding that reproduces the failures of the 1950 founding, in particular the exclusion of the majority of the population from genuine participation in the constituent process, would not represent the democratic emancipation from colonial constitutional tradition that the argument of this textbook demands. It would represent a new form of constitutional imposition.

The procedural requirements for a legitimate constitutional founding in India in the twenty-first century are more demanding than those that were available in 1950, and more demanding than those that have been available in most other founding moments, for two reasons: the size and diversity of India's population, which makes any claim of genuine representative participation enormously challenging, and the historical experience of democratic exclusion in the existing constitutional framework, which creates a specific obligation to ensure that the new founding does not replicate that exclusion.

The minimum procedural requirements for a legitimate constitutional founding are: a directly elected constituent assembly, chosen on the basis of proportional representation and with gender and social group quotas ensuring adequate representation of women, scheduled caste and scheduled tribe communities, religious minorities, and other historically marginalized groups; a pre-drafting process of extensive public consultation and civic education, organized through multiple media channels and in all recognized regional languages; a transparent and publicly accessible drafting process, with all drafts and deliberations published in real time; a mandatory public review and comment period for each major section of the draft constitution; and final ratification through a national referendum in which all adult citizens can participate.

This process would take years and would require significant political will and institutional investment. It would be vulnerable to capture by the most powerful political forces in India. It would require careful design of the constituent assembly's rules and procedures to ensure that marginalized communities can participate effectively rather than being drowned out by more politically experienced and better-resourced participants. But the challenges of designing and

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implementing such a process do not make it unnecessary or impossible. They make it demanding.

14.3 The Transitional Constitutionalism Approach

Between the limited reform possible through piecemeal amendment and the comprehensive transformation of a new constitutional founding, there is a third pathway that deserves consideration: the transitional constitutionalism approach, in which the existing constitutional framework is subjected to a systematic process of "constitutional clarification" through a combination of binding interpretive resolutions, constitutional commissions, and sequential constitutional amendments, organized around the explicit goal of moving toward a specified set of constitutional principles.

This approach has been used, with varying degrees of success, in several constitutional systems. The Constitutional Amendment processes in post-apartheid South Africa, which were conducted in stages with interim constitutional arrangements giving way to the permanent Constitution of 1996, provide one model. The German Constitutional Court's use of "constitutional commissions" to develop recommendations for amendment in areas of systemic constitutional dysfunction provides another.

The transitional constitutionalism approach has the advantage of operating within the existing constitutional framework and not requiring the formation of a constituent assembly before reform begins. It can achieve significant constitutional improvements in specific areas without waiting for the political conditions that would allow a comprehensive founding process. Its disadvantage is that it is subject to the same political constraints as the amendment process and does not address the foundational question of constituent legitimacy that a new founding would address.

In the Indian context, transitional constitutionalism might take the form of a constitutionally mandated process of constitutional review, in which an independent constitutional commission is established by Parliament to conduct a comprehensive assessment of the constitutional framework and to make recommendations for both amendment and new constitutional provisions. Such a commission was proposed by the National Commission to Review the Working of the Constitution, established under Justice M.N. Venkatachaliah in 2000, which submitted its report in 2002. The report made numerous recommendations for constitutional reform, many of which have not been implemented. A new commission, established with stronger political commitment and broader democratic participation, could provide the institutional framework for systematic constitutional reform in the transitional period before conditions are ripe for a comprehensive founding.

CONCLUSION TO PART SIX: THE URGENCY OF CONSTITUTIONAL RECONSTRUCTION

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Part Six has proceeded through fourteen chapters of detailed constitutional analysis, from the specific provisions requiring reform, through the theories and comparative models that illuminate the direction of reform, to the procedural frameworks and political conditions under which reform is achievable. The argument has been consistent throughout: the Indian Constitution, in its current form, is not adequate to the constitutional needs of the Indian people, and the inadequacy is structural rather than merely incidental.

The urgency of this argument is heightened by the specific constitutional moment in which India finds itself in 2026. The democratic backsliding documented by Freedom House, V-Dem, and the global democratic research community is not a temporary aberration that will naturally correct itself. It is the product of the constitutional design failures that this textbook has analyzed, operating in a specific political environment that has exploited those failures more systematically than previous political environments have done. The constitutional design failures create vulnerabilities that political actors have always had the potential to exploit. The current political moment is one in which those vulnerabilities are being exploited more fully than at any previous time since the Emergency of 1975-1977.

This means that the window for constitutional reform is not indefinitely open. Constitutional democracies that undergo sustained authoritarian consolidation progressively lose the institutional capacity and the civil society space needed for constitutional reconstruction. The concentration of executive power makes amendment harder. The erosion of judicial independence makes constitutional challenge harder. The suppression of civil society makes popular constitutional mobilization harder. The manipulation of electoral processes makes democratic replacement of authoritarian governments harder.

The argument of this textbook is therefore not only that constitutional reconstruction is necessary. It is that constitutional reconstruction is urgent, that the conditions under which it is possible are becoming more constrained rather than less, and that the window of democratic opportunity, while it remains open, must be used with full awareness of its fragility.

The constitutional scholars, legal professionals, civil society activists, journalists, and democratic citizens who read this textbook are the constituency for whom this argument is made. They are the people who can translate constitutional analysis into constitutional action, who can take the theoretical frameworks and specific proposals developed in the preceding chapters and find ways to advance them in the political, legal, and social struggles of the present moment. They are the people who can keep alive, in conditions of mounting constitutional pressure, the democratic aspiration of a constitutional order genuinely worthy of the Indian people.

The task is difficult. The obstacles are formidable. The forces opposing genuine constitutional change are powerful and well-organized. But the forces favoring constitutional change, in the final analysis, are stronger because they represent the majority: the poor, the marginalized, the excluded, the dissenting, the democratic, who are the real constituent power of the Indian republic and who have the moral authority and the democratic numbers to claim the constitutional order they have always deserved.

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End of Part Six

Part Seven of this textbook will examine, in detail, the specific reforms required in India's approach to international law, foreign policy accountability, and regional relations: the constitutional framework for India's international obligations, the democratic deficit in foreign policy making, the relationship between constitutional values and geopolitical conduct, and the specific constitutional mechanisms that would allow India to be a more principled, cooperative, and constructive presence in its region and in the world.

PART SEVEN: THE MACHINERY OF VICTIMHOOD

Economic Constitutionalism, Systemic Corruption, Corporate Capture, the Criminal State, and the People as Perpetual Subjects of Their Own Republic

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PREFACE TO PART SEVEN

There is a question that sits at the center of every serious inquiry into the Indian constitutional order, and it is a question that the textbooks and the civics courses and the celebratory

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anniversary speeches almost never ask. The question is this: seventy-five years after the Constitution of India came into force, who has benefited from it? Not in the aggregate statistics of GDP growth or average life expectancy, numbers that flatten the lived experience of hundreds of millions into a comfortable arithmetic of progress, but in the visceral, concrete, daily reality of ordinary life. Who goes to sleep in India tonight with their constitutional rights intact? Who wakes up tomorrow with the reasonable expectation that the state will treat them as a sovereign citizen rather than a subject? Who can actually use the courts, the legislature, the executive machinery, the electoral process, to make the state accountable to them?

The answer, examined without the comfortable mythology of India as the world's largest functioning democracy, is deeply uncomfortable. The Constitution of India has benefited, substantially and consistently, a relatively small fraction of the country's population: the educated upper and middle classes, the urban professional and business communities, the dominant castes, the English-speaking elite, and the political class itself. For the majority of Indian citizens, the constitutional order has not been a charter of liberation. It has been, with painful consistency, a framework that legitimizes their exploitation, regularizes their dispossession, mystifies their subjugation, and renders their suffering invisible behind the dazzling screen of formal rights and democratic procedure.

This is not an exaggeration made for rhetorical effect. It is a conclusion that emerges from decades of empirical research, from the record of judicial decisions and legislative history, from the testimonies of citizens who have tried to use constitutional machinery and found it broken, indifferent, or actively hostile, and from the comparative scholarship that places the Indian constitutional experience alongside similar documents in similar societies and asks why the outcomes have been so consistently disappointing for those who needed the constitution most.

Part Seven of this textbook addresses the mechanics of this disappointment. It investigates the constitutional framework of economic rights and distributive justice, the architecture of corruption that the constitution enables and conceals, the criminal justice system as an instrument of class and caste oppression, the treatment of women under a constitutional order that speaks the language of equality while perpetuating systemic patriarchy, the condition of press freedom and digital rights in an increasingly surveilled republic, and the mounting theoretical and practical case for not merely reforming but replacing the document that has governed this country since 1950.

The analysis in this part is drawn from the traditions of critical legal theory, from postcolonial jurisprudence, from the Ambedkarite tradition of constitutional critique, from Rawlsian and Dworkinian liberal theory, from socialist constitutional thought, from the emerging scholarship on comparative constitutional failure, and from the living reality of courtrooms, prisons, eviction sites, polling booths, and editorial offices across the country.

It is written in the conviction that a people who cannot speak honestly about the failures of their constitutional order cannot hope to build a better one.

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CHAPTER ONE: ECONOMIC CONSTITUTIONALISM AND THE ARCHITECTURE OF INEQUALITY

1.1 The Constitutional Framework of Economic Rights: Built for Whom?

The relationship between the Constitution of India and the economic life of its citizens is the central axis of Indian constitutional politics, and it is a relationship characterized by fundamental dishonesty. The dishonesty is structural rather than personal: it inheres in the constitutional design itself, in the decisions made by the Constituent Assembly about which economic provisions would be legally enforceable and which would be merely aspirational, which interests would be protected by justiciable rights and which would be left to the mercy of legislative discretion.

The constitutional framework of economic rights is divided, as previous parts of this text have discussed, between the enforceable provisions of Part III and the non-enforceable Directive Principles of Part IV. This division is not merely procedural. It reflects a substantive choice about who deserves constitutional protection as a matter of law and who must be content with constitutional aspiration as a matter of policy.

The rights that are immediately enforceable in the Constitution are predominantly the rights of the propertied and the educated: the right to practice any profession, trade, or business under Article 19(1)(g); the right to hold and dispose of property, reduced to a constitutional right under Article 300A after the 44th Amendment; the right to equality before the law and equal protection of the laws under Article 14, which has been extensively used by corporations and business interests to challenge regulatory legislation; and the freedom of contract, which, while not explicitly stated, has been read into several provisions by the courts.

The rights that are non-justiciable under the Directive Principles include: the right to adequate means of livelihood for all citizens (Article 39(a)); the right of men and women to equal pay for equal work (Article 39(d)); the right to work, education, and public assistance in case of unemployment, old age, sickness, and disablement (Article 41); the right to just and humane conditions of work and maternity relief (Article 42); and the right to a decent standard of living (Article 43). These are the rights that would make the constitutional order meaningful for the majority. And they are, as a matter of constitutional design, unenforceable by any court.

The theoretical justification for this asymmetry, that social and economic rights are positive rights that cannot be judicially enforced because they require resource allocations that only the legislature can determine, has been extensively debated in comparative constitutional theory and has largely been rejected by scholars working in the tradition of socio-economic constitutionalism. The Constitutional Court of South Africa enforces socio-economic rights including the right to housing, the right to water, the right to healthcare, and the right to social security, subject to the reasonableness review standard established in cases like Government of Republic of South Africa v. Grootboom (2000). The Constitution of Brazil guarantees extensive social and economic rights as justiciable constitutional provisions. The German Basic Law, through the social state principle (Sozialstaatsprinzip) of Article 20(1), creates enforceable obligations of social protection that the Federal Constitutional Court takes seriously. The

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international human rights law framework, including the International Covenant on Economic, Social and Cultural Rights ratified by India in 1979, accepts the principle that socio-economic rights create legal obligations, albeit subject to progressive realization.

India's Supreme Court, as noted, has responded to the non-justiciability of directive principles by reading many of their provisions into the right to life under Article 21. The right to livelihood (Olga Tellis v. Bombay Municipal Corporation, 1985), the right to health (Consumer Education and Research Centre v. Union of India, 1995), the right to education (Unni Krishnan v. State of Andhra Pradesh, 1993, subsequently constitutionalized by the 86th Amendment), the right to food (People's Union for Civil Liberties v. Union of India, 2001), and others have been recognized as components of Article 21 through judicial interpretation.

This is better than nothing. But it is an inadequate substitute for genuine constitutional protection. The judicial enforcement of socio-economic rights through Article 21 has several serious deficiencies. It depends on litigation being brought, which means it depends on organized civil society groups or sympathetic petitioners having the resources and awareness to bring cases. It is reactive rather than proactive: the court acts when a case is brought, not when a right is violated. The remedies available are largely declaratory, and the enforcement of compliance with judicial directions on socio-economic matters has been notoriously difficult, with directions about the right to food, for example, going repeatedly unimplemented without consequence.

Most importantly, the judicial expansion of Article 21 has not compensated for the fundamental problem of constitutional design: that the Constitution frames the economic life of the majority as a matter of directive aspiration rather than justiciable right, which means that the legislative and executive branches of government bear no legally enforceable obligation to prioritize the economic welfare of the poor. They may choose to do so, as various governments have done through programs like the Mahatma Gandhi National Rural Employment Guarantee Act, the National Food Security Act, and the Public Distribution System. But these choices are politically discretionary rather than constitutionally compelled, and they can be underfunded, misimplemented, politically manipulated, or simply abandoned by governments that choose to prioritize other interests.

1.2 Neoliberalism, Constitutional Silence, and the Commodification of Public Goods

The economic reforms initiated in 1991 under the government of P.V. Narasimha Rao and Finance Minister Manmohan Singh represented the most significant restructuring of India's economic framework since independence. The liberalization, privatization, and globalization agenda that these reforms initiated has transformed the Indian economy in ways that have had profound constitutional implications, implications that the constitutional framework has been entirely unprepared to address.

The 1991 reforms were never subjected to meaningful constitutional scrutiny. There was no parliamentary debate of the depth and duration that a fundamental reorientation of the state's economic role warranted. There was no constitutional amendment to authorize the withdrawal of the state from public sector activities that the Directive Principles had directed the state to pursue. The Directive Principles, which direct the state to prevent the concentration of wealth

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and means of production to the common detriment (Article 39(c)), to ensure that the economic system does not result in the concentration of wealth in the hands of a few (Article 39(d)), and to ensure adequate means of livelihood for all (Article 39(a)), were simply set aside as inconvenient. No court could strike down the reforms as violations of the Directive Principles because the Directive Principles are non-justiciable. No citizen could claim that privatization of public goods violated their constitutional right to a decent standard of living because that right is not justiciable.

The result is that one of the most transformative economic policy shifts in Indian history was implemented outside any effective constitutional framework. The Constitution, designed for a Nehruvian mixed economy with a large public sector and significant state intervention in economic life, provided no mechanism for evaluating whether the shift to market liberalism served or harmed the constitutional values of equality, justice, and the elimination of poverty. The courts were powerless to intervene on constitutional grounds. The Parliament, dominated by parties that embraced the liberalization agenda regardless of their ideological self-description, provided no effective deliberative check. Civil society organizations that challenged specific aspects of liberalization through public interest litigation had some success in particular cases, but no systemic constitutional remedy was available.

The consequences of this constitutional silence about economic transformation have been severe and well-documented. India's Gini coefficient (a measure of income inequality) has increased substantially since the 1990s: according to the World Inequality Report 2022, India is one of the most unequal countries in the world, with the top 1 percent of the population holding approximately 22 percent of national income and the top 10 percent holding about 57 percent, while the bottom 50 percent hold only about 13 percent. The Oxfam India Inequality Report of 2024 found that India's billionaire wealth had increased by massive multiples since 1991, while the condition of the bottom half of the population had improved far more modestly and unevenly.

This is not merely an economic inequality problem. It is a constitutional problem, because the Constitution of India explicitly contemplates a different relationship between the state and economic life: one in which the state actively prevents concentration of wealth, promotes the general welfare of the people, and ensures that the ownership and control of the material resources of the community are distributed to subserve the common good. That these constitutional commitments have been systematically abandoned without constitutional deliberation or accountability is a failure of constitutionalism, not merely of policy.

The privatization of essential public services, including water, electricity, healthcare, and education, raises constitutional questions that have not been adequately addressed by the courts. When the state withdraws from providing essential services and private providers step in, the result is the effective commodification of constitutional rights: the right to health becomes available to those who can pay for it, the right to education becomes accessible to those with sufficient income to afford private schools, the right to water becomes a market transaction rather than a public entitlement. This commodification is constitutionally suspect under any reading of the fundamental rights chapter, but the courts have been inconsistent in their responses.

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The judicial treatment of public interest litigation challenging privatization of water supply illustrates this inconsistency. In some cases, the courts have held that the state cannot abdicate its constitutional responsibilities by delegating them entirely to private parties. In others, the courts have deferred to executive decisions about service delivery modalities as questions of policy beyond judicial competence. The lack of a coherent constitutional framework for the relationship between public rights and private provision has allowed governments to withdraw from public service provision with minimal constitutional accountability.

1.3 Land Acquisition, Displacement, and the Constitutional Economy of Dispossession

The most acute form of economic violence perpetrated by the constitutional state against its own citizens is the compulsory acquisition of land. The power of eminent domain, the sovereign power to compulsorily acquire private property for public purposes, is an inherent attribute of statehood. Every state exercises it. The question is how it is regulated, who bears its costs, and whether those who lose their land to the state's developmental agenda are treated as partners in a collective project or as obstacles to be cleared from the path of progress.

In India, the constitutional and legal regulation of land acquisition has consistently favored the state and the business interests it serves over the communities that lose their land. The Land Acquisition Act of 1894, another colonial inheritance, governed the acquisition of land in India for over a century, until its partial replacement by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act of 2013 (LARR Act). The 1894 Act, like so many colonial instruments, was not designed to protect the rights of those whose land was acquired. It was designed to facilitate the state's development agenda with minimum friction. It defined "public purpose" broadly, offered minimal compensation calculated at market value without accounting for the full economic and social consequences of displacement, and provided no meaningful consultation with affected communities.

The scale of land acquisition and displacement in post-independence India is staggering. The sociologist Walter Fernandes estimated in his comprehensive research that between 1947 and 2000, approximately 60 million people were displaced by development projects in India, including dam construction, mining, industrial development, and infrastructure projects. Of these, fewer than 25 percent had been rehabilitated by the time his research was conducted. The proportionate burden of displacement fell overwhelmingly on adivasi and dalit communities: tribal communities constitute approximately 8 percent of India's population but have provided, according to various estimates, between 40 and 50 percent of those displaced by development projects.

This pattern of displacement is not coincidental. It reflects a systematic pattern in which the constitutional state has treated the lands occupied by tribal communities as resources available for developmental appropriation, rather than as territories in which people have rights that the state is constitutionally obligated to protect. The constitutional framework has been complicit in this pattern. Article 31A, inserted by the First Constitutional Amendment, immunized land reform legislation from fundamental rights challenge, but this immunity was designed to protect land redistribution from zamindars to peasants, not to protect tribal land from state acquisition for mining or industrial development.

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The Forest Rights Act of 2006 represented a belated attempt to recognize the historic rights of forest-dwelling communities over forest land. Its preamble acknowledges that the tribal and other forest-dwelling communities of India "have been living in such forests for generations but their rights on ancestral lands and their habitat were not adequately recognised in the consolidation of State forests during the colonial period as well as in independent India resulting in historical injustice to them." This acknowledgment is constitutionally significant: it admits that the colonial framework of forest governance, which placed vast forest territories under state control and criminalized the traditional land uses of the communities living within them, had been carried forward into independent India with similar consequences of dispossession and criminalization.

But the Forest Rights Act's implementation has been systematically undermined by forest bureaucracies, by state governments with different political priorities, and by the courts. The Supreme Court's order in Wildlife First v. Ministry of Forest and Environment (2019), which initially directed the eviction of millions of forest-dwelling families whose land rights claims had been rejected under the Act, before being stayed after massive public protest, illustrated with terrible clarity the precariousness of tribal land rights even under legislation specifically designed to protect them. The order reflected a judicial culture that has consistently prioritized the claims of the forest bureaucracy and wildlife protection interests over the rights of the communities whose survival depends on forest access.

The LARR Act of 2013, despite its many improvements over the 1894 Act, has been systematically weakened in its application. Several state governments have used the exemptions permitted under the Act to exclude vast categories of land acquisition from its consent and social impact assessment requirements. The central government attempted in 2014 and 2015 to amend the Act to remove the consent requirement for several categories of acquisition, efforts that were ultimately abandoned after substantial public opposition but that revealed the political priorities of the government with clarity.

The constitutional position of displaced communities in India remains fundamentally insecure. They face the compulsory acquisition of their land by a state armed with broad legal powers, inadequate compensation that does not account for the full economic, social, and cultural consequences of displacement, and rehabilitation frameworks that are underfunded, poorly designed, and unevenly implemented. They confront this power with minimal constitutional protection: the right to property under Article 300A is weak, the procedural protections of the LARR Act are frequently bypassed, and access to the courts to challenge acquisition decisions is expensive and slow. The constitutional promise of equality and distributive justice rings hollow in the mud of eviction sites across the tribal belts and urban margins of India.

1.4 The Goods and Services Tax, Fiscal Federalism, and the Centralization of Economic Power

The introduction of the Goods and Services Tax (GST) in 2017, through the One Hundred and First Constitutional Amendment, was described by its proponents as the most significant tax reform in independent India, a reform that would create a single national market, eliminate the

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cascading inefficiencies of the previous multi-layered indirect tax system, and produce substantial gains in economic efficiency. These economic arguments are not without merit.

But the GST reform also had profound constitutional implications for the fiscal relationship between the Union and the states that were glossed over in the political celebration of the reform's passage. The implementation of GST required all states to cede their independent power to levy sales tax, octroi, entry tax, and other state-level indirect taxes in exchange for a constitutionally guaranteed share of the GST revenue determined by the GST Council, a body in which the Union government holds decisive influence through its voting power and veto rights over decisions requiring a three-quarters majority.

The implications of this arrangement for fiscal federalism are serious. Prior to GST, states had significant independent fiscal space: the power to levy their own indirect taxes gave them a degree of financial autonomy that allowed them to make independent revenue decisions, to experiment with different tax structures, and to use fiscal policy as an instrument of state-level economic management. After GST, this fiscal space has been largely eliminated. States are dependent on the GST Council, in which the Union government has substantial influence, for decisions about tax rates, exemptions, and the allocation of revenue between the Union and the states.

The guarantee of states' revenue under the GST regime, which required the Union to compensate states for revenue shortfalls below a 14 percent compound annual growth rate for five years after GST implementation, became a major constitutional controversy during the COVID-19 pandemic when the Union government, facing its own fiscal crisis, disputed its obligation to pay compensation to states. The dispute, which was eventually settled through a combination of borrowing arrangements and delayed payments, revealed the vulnerability of states to Union fiscal decisions under the GST architecture.

The political economy of GST implementation also reveals a pattern of constitutional centralization that goes beyond the formal provisions of the One Hundred and First Amendment. The GST Council, though constitutionally established, operates in practice with a degree of Union dominance that is inconsistent with the federal principle. States that have raised concerns about the design or operation of the tax have limited ability to resist decisions made by the Council majority. The opacity of GST Council deliberations, the limited public scrutiny of its decisions, and the absence of any effective judicial review of Council decisions on tax rates and exemptions (which are treated as policy matters beyond constitutional challenge) all contribute to a framework of fiscal governance that substantially reduces state fiscal autonomy.

1.5 Labor Rights, the Constitution, and the Formalization Illusion

The Constitution of India contains extensive provisions relating to labor rights, distributed across the Directive Principles and a few provisions of the fundamental rights chapter. The Directive Principles require the state to secure just and humane conditions of work (Article 42), to ensure that workers are not exploited (Article 43), to make effective provision for securing the right to work, education, and public assistance in cases of unemployment (Article 41), and to secure

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participation of workers in management of undertakings (Article 43A, inserted by the 42nd Amendment).

These are, in their ambition, a comprehensive program of labor rights that would, if implemented, substantially transform the conditions of working life for the majority of India's population. The gap between this constitutional ambition and the reality of working life in India is so vast as to constitute a form of constitutional bad faith.

India has one of the largest informal labor markets in the world. Approximately 90 percent of India's workforce is employed in the informal sector, where labor laws are largely unenforced, where social security systems are largely inaccessible, where collective bargaining is practically impossible, and where the constitutional provisions on just and humane conditions of work are largely theoretical. The 400 million or so workers in the informal economy, construction laborers, domestic workers, street vendors, agricultural workers, home-based workers, migrant workers, and millions of others, live and work outside the effective reach of the constitutional labor rights framework.

The formalization agenda, which successive governments have pursued as a strategy for extending labor protections to informal workers, has produced limited results. The introduction of Aadhaar-linked direct benefit transfers has extended some social protection schemes to informal workers, but the underlying conditions of informal employment, the absence of job security, the lack of health and safety protections, the exposure to arbitrary dismissal, the inability to organize collectively, have not been transformed by these measures.

The four Labour Codes enacted between 2019 and 2020 (the Code on Wages, the Industrial Relations Code, the Social Security Code, and the Occupational Safety, Health and Working Conditions Code) represented an attempt to rationalize and modernize India's complex labor law framework. But critics have argued that the codes, while simplifying the regulatory framework, have done so in ways that systematically weaken worker protections, that they increase the threshold at which core labor protections apply (making it easier for medium-sized enterprises to avoid the application of labor law), and that the proposed gig economy provisions do not provide adequate protection for the growing class of platform workers employed by technology companies.

The constitutional position of platform workers illustrates a new dimension of the constitutional labor rights problem. Workers employed by app-based platforms like Uber, Swiggy, Zomato, and similar companies are typically classified as "independent contractors" rather than "employees," a classification that exempts them from virtually all labor law protections. The courts have not yet definitively resolved the constitutional questions raised by this classification, despite growing recognition in comparative jurisprudence (including decisions by the UK Supreme Court in Uber BV v. Aslam (2021) and the European Court of Justice in multiple cases) that the formal classification of platform workers as independent contractors does not accurately reflect the economic realities of their employment relationships.

The constitutional treatment of agricultural labor is even more troubling. Agricultural workers, who constitute the largest single category of the Indian workforce, are excluded from many

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central labor laws and are covered only by state-level legislation that varies enormously in content and enforcement. The minimum wage provisions, social security schemes, and working conditions regulations that protect industrial workers are largely inapplicable to agricultural laborers, who continue to work in conditions of economic dependence, seasonality, and vulnerability that the Constituent Assembly's labor rights provisions were intended to address.

CHAPTER TWO: CORRUPTION AS A CONSTITUTIONAL PHENOMENON

2.1 The Constitutional Architecture of Corruption

Corruption in India is not an aberration from the constitutional order. It is, in a very specific and analytically important sense, a product of the constitutional order: an emergent property of the institutional design choices that the Constitution makes, of the incentive structures those choices create, of the accountability gaps those choices leave unaddressed, and of the power concentrations those choices enable.

This claim requires careful explanation because it runs against the grain of the most common analysis of Indian corruption, which treats corruption as a cultural pathology, a failure of individual ethics, or a consequence of poverty and scarcity. These explanations are not without some validity, but they miss the structural dimension: the ways in which the constitutional and legal framework systematically creates opportunities for the extraction of private benefit from public power, and systematically weakens the mechanisms that might deter such extraction.

Consider, to begin with, the constitutional structure of discretionary executive power. The Indian administrative state is characterized by vast and frequently vague grants of discretionary power to executive officials at every level. The licensing and regulatory framework that governed the Indian economy before 1991, and that continues to govern large sectors of economic activity, was built on the principle that the state should control access to scarce resources and economic opportunities through administrative discretion. Officials who hold the power to grant or deny licenses, permits, clearances, and approvals hold, effectively, the power to determine winners and losers in the economic competition for scarce opportunities. In an environment of scarcity, this power creates systematic incentives for bribery.

The constitutional framework did not require that the licensing and regulatory system be designed in this way. A constitution committed to the rule of law and the equal protection of the laws would have constrained administrative discretion, required transparent and rule-governed criteria for administrative decisions, created independent oversight mechanisms with real enforcement powers, and provided accessible remedies for those aggrieved by administrative decisions. These features were largely absent from the constitutional design, and the consequence was a regulatory state in which discretionary power was concentrated, oversight was weak, and remedies were expensive and slow.

The administrative structure of the Indian state, built on the inherited framework of the Indian Civil Service, reinforced these tendencies. The ICS, and its successor the Indian Administrative

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Service, was a colonial institution designed for governance of a subject population, not for accountable public service to sovereign citizens. The traditions of bureaucratic hierarchy, of information as a tool of administrative power, of discretionary decision-making as an instrument of control, were carried forward from the colonial to the republican state with remarkable fidelity. The constitutional guarantee of freedom of information, while not explicit in the original document, was eventually recognized as implicit in the right to free speech under Article 19 and led to the enactment of the Right to Information Act in 2005. But a culture of administrative secrecy, embedded in the Official Secrets Act of 1923 (yet another colonial inheritance), continued to protect official decision-making from public scrutiny.

The constitutional provisions on local government, even after the 73rd and 74th Amendments of 1992, have not created genuinely empowered local governments with the financial resources to discharge their functions without dependence on state and central transfers. The consequence is that local officials, responsible for services that citizens depend on daily, including water supply, sanitation, local roads, building permissions, and agricultural services, are accountable upward to the bureaucratic and political hierarchy rather than downward to the citizens they serve. This configuration of accountability, upward to power rather than downward to citizens, is a constitutional design choice, and it creates systematic conditions for petty corruption at the level where most citizens encounter the state.

2.2 Electoral Finance, Political Corruption, and the Electoral Bonds Catastrophe

The relationship between money and politics in India is one of the most damaging features of the constitutional order, and it is a relationship that the constitutional framework has consistently failed to regulate effectively. The Constitution says nothing about the financing of political parties and election campaigns. The absence of constitutional requirements for transparency in party finance, for limitations on campaign spending, or for public funding of elections, has allowed political financing to develop in ways that have deeply corrupted the relationship between economic power and democratic governance.

The scale of money in Indian elections is staggering. The 2024 Lok Sabha elections were estimated by the Centre for Media Studies to have cost approximately 1.35 trillion rupees (approximately 16 billion US dollars), making them the most expensive elections in world history. This money does not come from the small individual donations that finance electoral campaigns in genuinely participatory democracies. It comes from large corporations, from business groups seeking policy favors, from criminal enterprises connected to the political system, and from the conversion of black money generated by tax evasion into electoral spending.

The electoral bonds scheme, introduced by the Finance Act of 2017 and subsequently struck down by the Supreme Court in Association for Democratic Reforms v. Union of India (2024), was the most sophisticated instrument ever devised in India for the conversion of corporate money into political funding with complete opacity. The scheme allowed companies and individuals to purchase electoral bonds from the State Bank of India and donate them anonymously to political parties. The anonymity was partial: the donors were known to the State Bank of India, which is controlled by the Union government, but not to the public. The parties

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that received the bonds could cash them without revealing who had donated them. The data subsequently released after the Supreme Court struck down the scheme revealed a pattern of enormous donations from companies with pending regulatory proceedings, from companies that had recently received government contracts, and from companies whose executives were facing investigation by central agencies, suggesting a systematic pattern of what the Court described as quid pro quo corruption.

The Supreme Court's judgment striking down the electoral bonds scheme is one of the most significant constitutional judgments in recent Indian history, and it deserves detailed analysis. The Court held, unanimously, that the scheme violated the voters' right to information under Article 19(1)(a), because it prevented voters from knowing who was funding which political party, information that is essential for informed electoral choice. The Court also held that the scheme created an impermissible risk of quid pro quo corruption in violation of Article 19(1)(a) and the constitutional requirement of free and fair elections as part of the basic structure. The Court's reasoning that transparency of electoral finance is a constitutional requirement, derived from the fundamental right to information, is an important constitutional development.

But the judgment, important as it is, addresses only one dimension of the much larger problem of money in politics. The constitutional framework provides no guidance on how elections should be financed, what limitations should be placed on campaign spending, whether the state should provide public funding to political parties, or how the inevitable conflict of interest between large donors and government policy should be managed. The striking down of the electoral bonds scheme removes one particularly egregious mechanism of opaque corporate funding, but the underlying problem of the relationship between economic power and democratic politics remains unaddressed by the constitutional framework.

The criminalization of politics is closely related to the problem of electoral finance. The Association for Democratic Reforms has documented that a substantial proportion of Members of Parliament elected in the 2024 Lok Sabha elections have criminal cases pending against them, including cases of serious crimes such as murder, rape, kidnapping, and extortion. The constitutional and legal framework has failed to prevent individuals facing serious criminal charges from contesting elections, despite Supreme Court interventions requiring the disclosure of criminal antecedents and directing the expeditious trial of politicians facing criminal charges. The fundamental problem is that the constitutional framework places the decision about candidate selection in the hands of political parties, which have found that candidates with criminal connections bring electoral advantages in terms of local power, financial resources, and the ability to mobilize voters through extra-legal means.

2.3 Anti-Corruption Institutions and Their Structural Failures

The institutional architecture for anti-corruption enforcement in India is extraordinarily complex, involving multiple agencies with overlapping jurisdictions, unclear accountability mechanisms, and chronic problems of political independence. The constitutional and statutory framework that governs these institutions has not produced effective anti-corruption enforcement. Instead, it has produced a system in which anti-corruption powers are routinely used as instruments of partisan political competition rather than as genuine tools of public accountability.

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The Central Bureau of Investigation is the primary investigation agency for corruption involving senior government officials and major economic offenses. Its legal foundation is a quirky combination of the Delhi Special Police Establishment Act, 1946 (yet another colonial inheritance) and executive orders. The CBI has no constitutional basis: it exists entirely by statutory and executive authority, which means that its independence is entirely contingent on the willingness of the government in power to respect it. The Supreme Court's description of the CBI as a "caged parrot speaking its master's voice" in the coal scam case of 2013 encapsulated the widely held understanding of the agency's political subordination.

The recent amendments to the Prevention of Corruption Act and the creation of the Lokpal under the Lokpal and Lokayuktas Act of 2013 were intended to strengthen anti-corruption institutions. The Lokpal, a constitutionally mandated but statutory anti-corruption ombudsman, was finally constituted in 2019 after years of delay. Its record in its first years of operation has been disappointing. The structural problems of the Lokpal, including limitations on its investigative power, dependence on central government cooperation for prosecution, and the political dynamics of its composition, have limited its effectiveness.

The Enforcement Directorate (ED), which enforces the Prevention of Money Laundering Act and the Foreign Exchange Management Act, has been the subject of sustained criticism for the political selectivity of its enforcement. Data compiled by researchers and journalists has shown that the large majority of high-profile ED raids and attachments in recent years have targeted politicians of opposition parties rather than politicians of the ruling party. The Supreme Court, while upholding the sweeping powers of the ED in Vijay Madanlal Choudhary v. Union of India (2022), in a judgment that has itself been criticized as insufficiently protective of civil liberties, did not substantively address the political use of the agency.

The constitutional problem with the anti-corruption architecture is not merely the weakness of individual institutions. It is the absence of any structural mechanism to insulate anti-corruption enforcement from political manipulation. A genuinely independent anti-corruption system would require constitutionally guaranteed independence of investigative agencies from the executive, a statutory framework of prosecutorial independence, transparent criteria for the exercise of investigative discretion, meaningful accountability mechanisms for investigative agencies themselves, and access to justice for those wrongfully targeted by anti-corruption investigations. None of these features characterizes the current Indian framework.

2.4 Judicial Corruption and the Silence of Constitutional Theory

Any honest analysis of corruption in the Indian constitutional order must address the judiciary, despite the institutional and personal discomfort this subject generates. The independence of the judiciary from the executive and legislature is constitutionally fundamental. But independence from one source of corruption does not imply immunity from other forms of corruption, and the Indian judiciary has not been immune.

The evidence of judicial corruption in India, while necessarily difficult to fully document given the opacity of judicial decision-making, is sufficient to require serious constitutional attention. The expose by journalist Sucheta Dalal in the 1990s documented instances of what was

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described as high court corruption in Bombay. The resignation of Justice C.S. Karnan of the Madras and Calcutta High Courts, who was subsequently convicted of contempt and imprisoned, was preceded by allegations from Karnan himself (admittedly a deeply compromised source) of corruption in the higher judiciary. The impeachment motion against Justice V. Ramaswami in 1993, which failed due to political considerations despite a judicial inquiry panel having found the charges proven, illustrated the inadequacy of the constitutional mechanisms for judicial accountability.

The constitutional framework for judicial accountability has a fundamental design flaw: it makes the removal of judges of the High Court and Supreme Court dependent on a parliamentary impeachment process that has never been successfully completed, creating what is effectively a regime of judicial unremovability. This absolute security of tenure, while intended to protect judicial independence from political pressure, has the unintended consequence of making it virtually impossible to remove judges who abuse their position.

The collegium system of judicial appointments, under which senior judges appoint their own successors, was intended to protect judicial independence from executive interference. But it has created its own accountability crisis. The collegium's deliberations are opaque. Its decisions are not explained. Its members are not subject to any external review. The potential for informal relationships, personal connections, caste and community preferences, and the mutual accommodation of interests that characterizes closed elite systems to influence judicial appointments has not been effectively addressed by the constitutional or statutory framework.

The Supreme Court's 2025 judgment striking down aspects of the Tribunals Reforms Act, 2021, on grounds that the act compromised the independence of tribunal members, represents the judiciary's continuing insistence on its own independence from executive control. The Court reiterated that tribunals discharge functions traditionally exercised by courts and must therefore be governed by the same standards of independence. Supreme Court Observer This is constitutionally principled. But it raises the question of whether the judiciary is equally consistent in applying independence standards to itself, particularly in the context of the collegium's own opacity and the absence of structural accountability mechanisms for the judicial branch.

CHAPTER THREE: THE CRIMINAL JUSTICE SYSTEM AS AN INSTRUMENT OF CLASS OPPRESSION

3.1 The Bharatiya Nyaya Sanhita: A Colonial Framework Rebranded

In 2023, the Indian Parliament enacted three laws that replaced the Indian Penal Code of 1860, the Code of Criminal Procedure of 1973, and the Indian Evidence Act of 1872: the Bharatiya Nyaya Sanhita, the Bharatiya Nagarik Suraksha Sanhita, and the Bharatiya Sakshya Adhiniyam respectively. These laws were presented as a fundamental decolonization of the criminal justice system, a replacement of colonial legislation with laws that reflect Indian values and constitutional principles.

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The constitutional and jurisprudential assessment of these new laws, however, suggests that the decolonization is largely symbolic rather than substantive. The laws retain the fundamental architecture of the colonial criminal justice framework: the same category structure of offenses, the same basic procedural scheme, the same hierarchical relationship between police, prosecution, and courts, and, critically, many of the same provisions that have been most widely criticized for enabling the criminalization of legitimate political and social activity.

The sedition provision, which had been a subject of intense constitutional controversy and which the Supreme Court had effectively suspended in S.G. Vombatkere v. Union of India (2022) while directing a government review, was nominally removed from the Bharatiya Nyaya Sanhita. But it was replaced by Section 152, which criminalizes acts that "endanger the sovereignty, unity and integrity of India" or that "excite secession, armed rebellion or subversive activities," with penalties of up to seven years' imprisonment. Legal scholars have argued that this new provision is potentially broader than the old sedition law and that the claimed decolonization in this respect amounts to a renaming rather than a genuine change.

The Bharatiya Nagarik Suraksha Sanhita extended the period for which police custody can be maintained before a person must be produced before a magistrate, increased the period for which a person can be held in police custody, and expanded the provisions for handcuffing of accused persons. These provisions move the balance of the criminal procedure framework further toward the exercise of police power and away from the protection of accused persons' rights, contrary to the direction that constitutional development under Article 21 would suggest.

The process by which these laws were enacted is itself a constitutional concern. They were passed with minimal parliamentary debate, without adequate consultation with legal practitioners, state governments, academic institutions, or civil society organizations, and without the kind of systematic review by law commissions that the importance of the changes would warrant. The Parliamentary Standing Committee, which in a healthy legislative process would have examined the Bills in detail, received only a summary review. This legislative process, which produces law of the greatest importance to every citizen's liberty and security through a process of minimal deliberation, is itself a symptom of the constitutional failure of the Indian Parliament as a genuine legislative institution.

3.2 Custodial Violence, Torture, and the Constitutional Paradox

The constitutional prohibition of torture and custodial violence is unequivocal. Article 21, as interpreted by the Supreme Court over decades, prohibits torture, cruel, inhuman, and degrading treatment as violations of the right to life and dignity. The Supreme Court has in numerous cases (including D.K. Basu v. State of West Bengal (1996), which established specific procedural guidelines for arrest and detention designed to prevent custodial abuse) reaffirmed that police brutality and torture are not merely illegal but unconstitutional.

And yet custodial violence in India is pervasive, systematic, and largely unpunished. The National Campaign Against Torture reported 1,006 deaths in judicial and police custody in 2020, an average of approximately three per day. The National Human Rights Commission, which tracks custodial death data, receives thousands of reports annually. These numbers almost

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certainly understate the true scale of the problem because many incidents of custodial abuse, particularly in rural areas and against marginalized communities, are never reported.

The constitutional paradox is not difficult to identify: a constitutional order that explicitly prohibits torture and provides multiple levels of constitutional remedy, including habeas corpus petitions, writ petitions under Article 32, and statutory complaints to the NHRC, should not be producing thousands of custodial deaths and tens of thousands of incidents of custodial abuse annually. The gap between constitutional protection and physical reality reveals a systemic failure that goes beyond the behavior of individual officials.

The structural reasons for this failure are multiple. The police culture, which normalizes physical coercion as an investigative tool, is a product of the colonial policing tradition that has never been genuinely reformed. The institutional incentives of the police system reward successful "solving" of crimes, which in practice often means extracting confessions, rather than the careful evidence-based investigation that constitutional due process requires. The accountability mechanisms for custodial abuse are weak: police complaints authorities exist in most states but have poor track records of independence and effectiveness, the magistracy that is supposed to supervise the exercise of police custody powers frequently fails to do so, and prosecutions of police officers for custodial violence are rare and convictions rarer still.

The Supreme Court's D.K. Basu guidelines, which require the recording of arrest, the provision of legal aid, the medical examination of detainees, and the informing of family members, are regularly violated without legal consequence. The National Police Commission reports of the 1970s and 1980s recommended comprehensive police reforms that were never implemented. The Supreme Court's directions in Prakash Singh v. Union of India (2006) on police reforms, including the establishment of State Security Commissions to oversee police functioning and the constitution of Police Complaints Authorities, have been implemented only partially and inadequately by most states.

India has not ratified the United Nations Convention Against Torture, despite having signed it in 1997. The failure to ratify is not merely a foreign policy omission: it reflects a deliberate choice not to accept international legal obligations that would require domestic legal reform. A constitutional framework genuinely committed to the prohibition of torture would have ratified this Convention, would have enacted domestic anti-torture legislation, and would have created effective accountability mechanisms for torture and custodial abuse. None of these steps has been taken.

3.3 The Prison System and the Criminalization of Poverty

India's prison system is one of the most devastating revelations of what the constitutional order actually does to the most vulnerable citizens of the republic. The prisons of India are chronically overcrowded, overwhelmingly populated by the poor, a disproportionate number of undertrials (people who have not been convicted of any crime but are awaiting trial), and institutions that, for the most part, compound the social disadvantages of those imprisoned rather than providing any meaningful rehabilitation.

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According to the National Crime Records Bureau's Prison Statistics India 2022, the total prison population of India is approximately 573,000 inmates against a sanctioned capacity of approximately 425,000, an overcrowding rate of approximately 131 percent. But the national aggregate conceals states where overcrowding is far more severe: Uttar Pradesh prisons in 2022 were reported to be at approximately 180 percent capacity, and several other states were similarly overloaded.

The composition of the prison population reveals the class character of the criminal justice system with brutal clarity. Approximately 75 to 77 percent of the prison population consists of undertrials, people who have been charged but not convicted. This is constitutionally shocking: a system that presumes innocence and guarantees the right to a speedy trial under Article 21 has roughly three quarters of its prison population in pre-trial detention. The average period of undertrial detention is measured in years rather than months. For serious offenses, particularly those under special laws like the UAPA and the NDPS Act, undertrial detention can extend for a decade or more.

The social composition of the undertrial population reflects the deep inequalities of the constitutional order. The poor, the illiterate, and those without access to effective legal representation are most likely to remain in pretrial detention, because the bail system effectively conditions liberty on financial resources. The right to bail, established by the Code of Criminal Procedure and now the Bharatiya Nagarik Suraksha Sanhita, is in practice a right conditional on the ability to meet bail conditions, which typically include the posting of surety or property as collateral. For those without property or creditworthy surety, bail is a right they cannot exercise.

The Supreme Court's judgment in Satender Kumar Antil v. CBI (2022) addressed the endemic problem of undertrial overcrowding in India's jails, directing courts to take proactive steps to release undertrials who have served significant periods in pretrial detention and emphasizing the constitutional obligation to ensure that bail is not effectively denied to the poor. These directions have had some positive effect, but the structural causes of undertrial overcrowding, the slow pace of trials, the culture of risk aversion in judicial bail decisions, the inadequate legal aid system, have not been resolved by any judicial direction.

The condition of India's prisons also violates the constitutional right to dignity under Article 21. Court decisions including Francis Coralie Mullin v. Union Territory of Delhi (1981) have established that the right to life includes the right to live with human dignity, and that prison conditions that violate basic standards of hygiene, food, and safety are unconstitutional. But the endemic overcrowding, the understaffing, the inadequate medical facilities, the reports of violence between prisoners and against prisoners by guards, and the primitive sanitary conditions in many institutions all represent ongoing violations of these constitutional standards for which there is no effective remedy.

3.4 The Bail System and Pre-Trial Detention as Punishment

The bail system is the hinge on which the constitutional right to liberty turns in the criminal justice system. The principle that bail is the rule and jail the exception, repeatedly affirmed by the Supreme Court, is the constitutional translation of the presumption of innocence into

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practical liberty. A person who has not been convicted of a crime should not be imprisoned while awaiting trial, except in the most exceptional circumstances where the risk of flight or the risk of tampering with evidence or the danger to public safety is so severe that no other measure will suffice.

In practice, the Indian bail system systematically reverses this principle. For a wide range of offenses, including many offenses under special legislation like the UAPA, the NDPS Act (Narcotic Drugs and Psychotropic Substances Act), and the PMLA (Prevention of Money Laundering Act), the law expressly reverses the ordinary presumption in favor of bail, requiring the accused to prove that they are not guilty of the offense and that they are not likely to commit any offense while on bail before bail can be granted. The Supreme Court's repeated emphasis on bail as the rule and not the exception, as articulated most recently in Satender Kumar Antil, has been consistently undermined by the legislative expansion of these special bail provisions.

The implications of the reversed bail presumption under the PMLA were explored in the Supreme Court's judgment in Vijay Madanlal Choudhary, which upheld the constitutionality of the challenged provisions by a majority that has been widely criticized as overly deferential to the legislative choice and insufficiently protective of the right to liberty. The judgment's analysis of whether the PMLA's stringent bail conditions constitute an unconstitutional denial of liberty failed, in the view of many constitutional scholars, to adequately weigh the demonstrated pattern of the ED's use of money laundering charges as instruments of political harassment.

The combination of reversed bail presumptions, slow trial processes, and inadequate legal representation creates what effectively functions as a system of administrative detention without trial for large numbers of accused persons, particularly those accused under special laws. This is constitutionally indistinguishable, in its practical effect on the liberty of the accused, from the preventive detention that Article 22 attempts to regulate: in both cases, the state deprives a person of liberty for extended periods without a trial and without proof of guilt. The difference is formal: one is called criminal prosecution and the other preventive detention, but the practical experience of the imprisoned person is the same.

CHAPTER FOUR: WOMEN, GENDER, AND THE CONSTITUTIONAL ORDER

4.1 Gender, the Constitution, and the Architecture of Patriarchy

The Constitution of India guarantees equality between men and women in explicit and unambiguous terms. Article 14 guarantees equality before the law and equal protection of the laws to all persons. Article 15(1) prohibits discrimination on grounds of sex, among others. Article 15(3) permits the state to make special provisions for women and children. Article 16 guarantees equality of opportunity in public employment. Article 39(a) directs the state to secure for all citizens, men and women equally, the right to an adequate means of livelihood. Article 39(d) directs equal pay for equal work for both men and women. Article 42 directs the state to make provision for just and humane conditions of work and for maternity relief.

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Taken together, these provisions constitute a constitutional commitment to gender equality that should, in a constitutional order with effective enforcement mechanisms, have produced a society in which women enjoy substantively equal rights, opportunities, and protections. The distance between this constitutional promise and the lived reality of Indian women is one of the most damning indictments of the constitutional order.

India's gender inequality is documented comprehensively in both domestic and international data. The Global Gender Gap Report 2023 ranked India 127th out of 146 countries on overall gender equality. India ranked 140th on economic participation and opportunity. The female labor force participation rate in India is among the lowest in the world for a country of India's income level, hovering around 25 percent in recent years, and has actually declined from a higher rate in earlier decades. The ratio of women to men in India's population, reflecting the combination of sex-selective abortion and neglect of girl children, is deeply concerning. Violence against women, including domestic violence, sexual assault, and harassment, is pervasive and systematically underreported and underpunished.

The constitutional framework has not produced these outcomes despite its gender equality provisions. It has been complicit in producing them, because the constitutional design choices that affect women's lives reflect and reinforce patriarchal social structures rather than challenging them. This complicity operates through several mechanisms.

The first is the constitutional silence on personal laws. The Constitution of India permits the continuation of religion-based personal laws governing marriage, divorce, inheritance, adoption, and guardianship. Article 44, a Directive Principle, directs the state to "endeavour to secure for the citizens a Uniform Civil Code throughout the territory of India," but this is non-justiciable and has not been implemented in the seven decades since the Constitution came into force. The result is that the most intimate aspects of women's lives, those that most directly determine their economic security, their personal liberty, and their access to their children, are governed by religious legal frameworks that are, in varying degrees, structured around patriarchal assumptions.

Muslim women were, until the Supreme Court's judgment in Shayara Bano v. Union of India (2017) and the subsequent Muslim Women (Protection of Rights on Marriage) Act of 2019, subject to the practice of triple talaq, under which a husband could divorce his wife by pronouncing the word "talaq" three times, with no corresponding right of the wife to initiate divorce. The Supreme Court's striking down of instant triple talaq as unconstitutional was a constitutional milestone, and the 2025 Supreme Court judgment in Rousanara Begum reaffirmed that the interpretation of the Muslim Women (Protection of Rights on Divorce) Act, 1986 must be done, keeping at the forefront equality, dignity, autonomy and the lived experiences of women where particularly in smaller towns and rural areas, inherent patriarchal discrimination is still the order of the day. SCC Times But the larger system of Muslim personal law continues to treat women as having lesser rights than men in marriage, inheritance, and other family matters, protected from constitutional challenge by the political sensitivity of personal law reform.

Hindu personal law, while substantially reformed by the Hindu Code Bills of the 1950s (which were themselves a major political achievement), continues to contain provisions that

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disadvantage women in inheritance and property matters, particularly in the context of agricultural land in some states. The Hindu Succession Act, as amended in 2005, removed the exclusion of daughters from coparcenary rights in ancestral property, but the implementation of this amendment in courts and in social practice has been incomplete and contested.

4.2 Sexual Violence, Institutional Failure, and Constitutional Accountability

The constitutional treatment of sexual violence against women is a case study in the gap between constitutional aspiration and institutional failure. Article 21, as interpreted by the Supreme Court, includes the right of every woman to live with dignity, free from sexual violence and harassment. The specific provisions of the criminal law, including the substantially amended Sexual Offences provisions of the Bharatiya Nyaya Sanhita (replacing the amended IPC provisions introduced in 2013 after the Delhi gang rape case), the Protection of Children from Sexual Offences Act of 2012, and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act of 2013 (POSH Act), together constitute a substantial legislative framework for the protection of women from sexual violence.

Yet the reality of sexual violence in India remains appalling. The NCRB data for 2022 recorded approximately 31,500 cases of rape, a figure that represents a fraction of actual incidents given the massive underreporting caused by social stigma, fear of further trauma from the criminal justice process, distrust of police responsiveness, and, in many cases, fear of social ostracism and violence from the perpetrator's community. The conviction rate in rape cases is approximately 27 percent, meaning that fewer than one in three reported rape cases results in a conviction.

The institutional failures of the criminal justice system in responding to sexual violence are multiple and well-documented. Police resistance to registering FIRs in rape cases, the trauma of medical examination procedures that have historically been degrading (the "two-finger test," which purports to examine whether a woman is "habituated to sexual intercourse" and which the Supreme Court has declared unconstitutional but which continues to be used in some jurisdictions), the slow pace of trial in cases where the victim must maintain contact with the criminal justice system for years, the inadequacy of support services for survivors, and the community pressure on women to withdraw complaints against men from their own or higher-status communities, all constitute failures of institutional response that the constitutional framework has been unable to address.

The POSH Act implementation has been deeply inadequate. The Supreme Court, in Aureliano Fernandes v. State of Goa (2025), directed that a survey shall be conducted to count the number of organisations which have already constituted the Internal Complaints Committee (ICC) within a period of 6 weeks. SCC Times The very fact that a court order was necessary to compel a basic survey of whether mandatory anti-harassment committees have been established by employers reveals the depth of non-compliance with the Act's requirements. In 2025, more than a decade after the Act's passage, vast numbers of workplaces, particularly in the informal sector where the majority of women workers are employed, have never constituted an ICC.

The constitutional framework's treatment of women's sexual and reproductive rights is also inadequate. The Medical Termination of Pregnancy Act permits abortion under specified

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conditions, and has been amended to extend the gestational limit under which abortion is permitted. But access to safe abortion services is highly unequal, with women in rural and low-income urban areas having far more limited access than those in major cities. The Supreme Court's jurisprudence on reproductive rights, while recognizing a right to bodily autonomy under Article 21, has not been translated into effective legal and institutional guarantees of access.

4.3 Women's Political Representation and the Constitution's Democratic Deficit

The constitutional framework's failure to ensure adequate representation of women in political and public life is one of its most visible shortcomings. The Constitution, as originally enacted, did not require any representation of women in Parliament, state legislatures, or other elected bodies. The 73rd and 74th Amendments of 1992 required reservation of one-third of seats in local bodies for women, a provision that has meaningfully increased women's representation in panchayats and urban local bodies (though it has also been criticized for creating "proxy" elected women who act as fronts for their male relatives).

The Constitution (106th Amendment) Act of 2023 finally provided for 33 percent reservation for women in the Lok Sabha and state legislative assemblies, a constitutional change that had been demanded for decades. But the Amendment's implementation was linked to the completion of a delimitation exercise (the redrawing of constituency boundaries) that was itself made contingent on the census that had been due in 2021 but had not yet been completed as of early 2026. The result was that the Women's Reservation Act was enacted but could not be implemented in the 2024 general elections, making it a constitutional commitment of unspecified future implementation.

The women's representation in the 2024 Lok Sabha is approximately 13.6 percent of the total strength, one of the lower figures among democratic countries of India's income level. The failure to ensure adequate representation of women in legislative bodies means that the laws that govern the lives of India's female majority are primarily made by men, a democratic deficit that is constitutional in both its causes and its consequences.

CHAPTER FIVE: MEDIA FREEDOM, DIGITAL RIGHTS, AND THE MANUFACTURED CONSENT

5.1 Press Freedom, Article 19, and the Slow Strangulation

The freedom of the press in India, guaranteed implicitly through Article 19(1)(a)'s protection of freedom of speech and expression, has been systematically and progressively undermined over the past decade in ways that represent a serious constitutional crisis. The press is constitutionally central to democratic governance: it is the primary mechanism through which citizens receive information about the exercise of public power, through which accountability is demanded and enforced, and through which the diversity of views that democracy requires is expressed and contested. A democracy without a genuinely free press is a democracy in form only.

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India was ranked 161 out of 180 countries in the World Press Freedom Index, published by Reporters Without Borders in 2023, Wikipedia a ranking that places it alongside countries not conventionally described as free societies. The mechanisms by which press freedom has been constrained in India do not primarily take the form of direct censorship or formal suppression: the colonial-era experience of the Emergency, when the press was directly censored, is a lesson that the present generation of those who control Indian media discourse has learned. Instead, the suppression operates through a combination of economic pressure, legal harassment, regulatory threat, and the selective prosecution of critical journalism under laws designed for other purposes.

The concentrated ownership of Indian media is a constitutional concern that receives little attention in conventional constitutional analysis. The major television channels, print outlets, and digital media platforms are owned by a relatively small number of large industrial conglomerates whose other business interests create systematic incentives for favorable editorial treatment of the government and the regulatory and policy decisions that affect those businesses. When the owner of a major media group is simultaneously seeking regulatory approvals, government contracts, or favorable adjudication of legal disputes with the state, the structural independence of that media group's editorial function is fatally compromised, regardless of any formal commitment to editorial independence.

The legal harassment of journalists and media organizations that have published material critical of the government takes multiple forms. The application of sedition provisions (Section 124A of the IPC and its successor in the Bharatiya Nyaya Sanhita), the use of defamation law (including criminal defamation under Section 499 of the IPC), the invocation of the UAPA against journalists who have written about conflict areas, the use of Information Technology Act provisions to arrest individuals for social media posts, and the investigation and harassment of media organizations and their journalists by income tax authorities, the ED, and the CBI, all function as instruments of chilling effect that suppress critical journalism without the need for formal censorship.

The constitutional protection for press freedom under Article 19 is subject to restrictions on grounds including "defamation," "public order," "sovereignty and integrity of India," and "security of the state." These broad exceptions have been used to justify the prosecution of journalism that the government finds inconvenient. The courts, which should be the primary constitutional protection for press freedom, have been inconsistent in their enforcement. While the Supreme Court has delivered important pro-press freedom decisions (including the striking down of Section 66A of the Information Technology Act in Shreya Singhal v. Union of India (2015)), it has in other cases been insufficiently protective.

The Internet Freedom Foundation's tracking of internet shutdowns in India reveals that India is consistently the world's largest user of internet shutdowns, with hundreds of shutdowns occurring annually, most of them in states experiencing political unrest or electoral activity. The Jammu and Kashmir internet shutdown that accompanied and followed the abrogation of Article 370 in August 2019 was the longest ever recorded internet shutdown in a democracy, lasting in various forms for more than a year. The Supreme Court's judgment in Anuradha Bhasin v. Union of India (2020) held that the freedom of speech and expression through the internet is a

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fundamental right, subject to proportionate restrictions, and directed the review of shutdown orders. But the judgment's practical impact has been limited: internet shutdowns have continued, and the review process mandated by the Court has not been effectively implemented.

5.2 Digital Rights, Surveillance, and the Emerging Constitutional Crisis

The surveillance capabilities of the modern state represent a qualitatively new dimension of the constitutional tension between state power and individual liberty. The Constitution of India was drafted in a world of paper files, physical surveillance, and informants: the surveillance capabilities available to the Indian state in 2025 are incomparably greater, more comprehensive, and more intrusive than anything that the framers could have imagined.

The constitutional right to privacy, recognized by the Supreme Court in K.S. Puttaswamy v. Union of India (2017), provides a constitutional foundation for the protection of citizens against intrusive state surveillance. The nine-judge bench in Puttaswamy held, unanimously, that the right to privacy is a fundamental right under Articles 14, 19, and 21, and that it encompasses informational privacy (the right to control information about oneself), decisional privacy (the right to make personal decisions about one's life without state interference), and spatial privacy (the right to be free from physical intrusion into one's personal space).

The Puttaswamy judgment was, in the terms of constitutional philosophy, a landmark. But its translation into effective protection against state surveillance has been inadequate, because the constitutional right to privacy, while established, has not been accompanied by the institutional and legal infrastructure necessary to make it effective against the technological capabilities of the modern surveillance state.

The Pegasus spyware controversy, in which phone numbers of Indian journalists, opposition politicians, constitutional court judges, and human rights activists appeared on lists leaked by the Forbidden Stories consortium in 2021, raised constitutional questions about state surveillance of a severity and directness that demanded decisive judicial and legislative response. The Indian government declined to confirm or deny whether it had used Pegasus, citing national security considerations. The Supreme Court constituted a technical committee to investigate. The committee's report was submitted but has not been made public. The constitutional questions, whether the surveillance of journalists and judges violates their fundamental rights, whether the absence of legal authorization for such surveillance violates the rule of law, and whether the national security exception to privacy rights can be invoked without any meaningful judicial oversight, remain unresolved.

The Digital Personal Data Protection Act of 2023 (DPDPA) was intended to provide a legal framework for the regulation of personal data processing. Its passage was delayed for years, and the version ultimately enacted has been widely criticized by privacy advocates, digital rights organizations, and the Justice B.N. Srikrishna Committee (which had produced the original draft data protection legislation) for weakening critical protections from the earlier draft. The DPDPA contains broad exemptions for state data processing, including for national security, law enforcement, and research purposes, that critics argue effectively exempt the state from most of the data protection obligations it imposes on private actors.

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5.3 The IT Rules, Intermediary Liability, and the Architecture of Online Censorship

The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, and their subsequent amendments, represent an attempt by the executive to assert control over online speech and media that raises serious constitutional questions. The Rules require large social media intermediaries to appoint compliance officers, to take down content on government orders within specified timeframes, to provide law enforcement with access to encrypted communications in specified circumstances, and to implement traceability of communications to their originators.

The constitutional challenge to the IT Rules has proceeded through multiple High Courts, with different courts reaching different conclusions on different provisions. The fundamental constitutional questions, whether the executive has constitutional authority to impose content regulation and takedown obligations on online intermediaries without parliamentary legislation specifically authorizing such regulation, whether the requirements for traceability of encrypted communications are compatible with the constitutional right to privacy, and whether the broad government powers to direct content takedown are consistent with the right to free speech, have not been definitively resolved by the Supreme Court.

The constitutional principle of legality, derived from Articles 19 and 21, requires that restrictions on fundamental rights be authorized by law and not merely by executive action. The IT Rules' legal basis, the rule-making power under Section 87 of the Information Technology Act, is itself constitutionally contested: critics argue that the fundamental changes in the regulation of speech and media represented by the 2021 Rules exceed the scope of the rule-making power conferred by the Act and amount to unconstitutional subordinate legislation.

The implications of these digital rights issues for the constitutional order extend beyond the specific provisions of the IT Rules and the DPDPA. The internet has become, for a growing proportion of India's population, the primary medium for political participation, for the exercise of free speech, for access to information, and for the organization of civil society. The constitutional framework's adequacy for the protection of digital rights, and the institutional capacity of the courts and regulatory bodies to enforce that protection against the combined forces of state surveillance and algorithmic control, are questions that will be central to Indian constitutionalism in the coming decades.

CHAPTER SIX: THE PEOPLE AS VICTIMS: HOW THE CONSTITUTIONAL STATE SYSTEMATICALLY HARMS THOSE IT CLAIMS TO SERVE

6.1 The Theory of Constitutional Victimhood

The concept of "constitutional victimhood" as used in this chapter requires theoretical elaboration. It is not the claim that every citizen who suffers harm in India suffers harm at the hands of the Constitution. It is the more specific and more serious claim that certain categories of harm systematically inflicted on certain categories of citizens by the Indian state are enabled,

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legitimized, and concealed by the constitutional framework rather than prevented and remedied by it.

The theoretical framework for understanding this claim draws on several traditions. From critical legal theory, particularly the work of Roberto Unger and Duncan Kennedy, comes the insight that law, including constitutional law, is not a neutral framework that stands above political and social conflict but an expression of political and social power that reflects the interests of those who design and operate it. From postcolonial legal theory, particularly the work of scholars like Upendra Baxi, comes the understanding that the colonial state's legacy of treating the governed population as subjects rather than citizens has been imperfectly transformed by the formal conversion to republican constitutional government. From Ambedkarite social constitutionalism comes the devastating critique that formal legal equality is meaningless for those who lack the social, economic, and cultural resources to exercise it.

The synthesis of these perspectives produces an understanding of the Indian constitutional order as one that, for the majority of its subjects, functions less as a framework of rights and more as a framework of structured vulnerability: it defines the terms on which people can be displaced from their land, imprisoned without trial, subjected to police violence, excluded from access to courts, denied social and economic rights, and exploited economically, while simultaneously providing the legitimizing vocabulary of rights and democracy that prevents this structured vulnerability from being clearly seen as what it is.

6.2 The State as Landlord: Land, Resources, and the Constitutional Economy of Extraction

The constitutional position of the state with respect to natural resources reveals a fundamental tension that has never been adequately resolved. On the one hand, Article 39(b) directs the state to ensure that "the ownership and control of the material resources of the community are so distributed as best to subserve the common good." On the other hand, the actual practice of resource governance in India has consistently favored the extraction of these resources for the benefit of corporations and the state treasury rather than for the communities in whose territories the resources are located.

The allocation of mining rights, forest concessions, spectrum licenses, and other natural resource rights has been one of the most corrupt features of Indian governance, a fact dramatically illustrated by the 2G spectrum allocation scandal (in which spectrum was allegedly allocated at below-market rates to favored operators in 2008, causing a notional loss to the exchequer of approximately 1.76 trillion rupees according to the Comptroller and Auditor General), the coal block allocation scandal (in which coal mining rights were allocated without competitive auction to favored companies, allegedly causing a similar scale of loss), and numerous state-level mining and forest clearance scandals.

The constitutional framework has failed to prevent these scandals not because of the absence of relevant principles but because of the absence of effective enforcement mechanisms. The Comptroller and Auditor General of India, a constitutional body under Articles 148-151, has documented numerous instances of financial irregularity and corruption in natural resource allocation. The CAG reports have been essential instruments of public accountability. But the

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CAG has no power to recover losses, to prosecute wrongdoers, or to prevent future irregularities: it can only report to Parliament, and Parliament may or may not act on the reports.

The constitutional framework for natural resource governance is further complicated by the intersection of resource rights with the rights of tribal communities. Under the Fifth Schedule and the PESA Act (Panchayats Extension to Scheduled Areas Act of 1996), gram sabhas (village assemblies) in scheduled areas have constitutionally recognized rights to consent to the use of resources in their territories. These rights have been systematically ignored or circumvented by state and central governments pursuing resource extraction in tribal areas. The constitutional courts have sometimes intervened to enforce these rights (as in Niyamgiri v. Vedanta Resources (2013), where the Supreme Court upheld the Dongria Kondh community's right to consent to bauxite mining in their ancestral hills), but these interventions have been exceptional rather than systematic.

The broader pattern is one in which the state treats the natural resources of India's territories as sovereign property to be disposed of for maximum revenue, rather than as resources held in trust for the communities that depend on them and for future generations. This pattern reflects a constitutional understanding of state sovereignty that is derived from colonial concepts of crown property rights rather than from any genuinely republican understanding of the state as trustee of the people's resources.

6.3 Healthcare, the Constitution, and the Death of the Poor

The right to health has been recognized as a component of the right to life under Article 21 through a series of Supreme Court judgments beginning with the Consumer Education and Research Centre case in 1995. The constitutional right to health includes, as the Court has held, the right to medical treatment, the right to a clean environment, the right to food and nutrition, and the right to a healthcare system that is reasonably accessible to all.

The reality of healthcare access in India in 2024 and 2025 represents a sustained and systematic violation of this constitutional right for the majority of the population. Public health expenditure in India has historically been among the lowest in the world for a country of its income level: even after recent increases, it stands at approximately 1.5 to 2 percent of GDP, compared with 5 to 8 percent in other middle-income countries and 8 to 12 percent in high-income countries. The public healthcare system, which is the only option for the majority of the population that cannot afford private healthcare, is chronically underfunded, understaffed, poorly equipped, and unevenly distributed, with acute shortages of medical personnel, drugs, and facilities in rural areas where the majority of the population lives.

The COVID-19 pandemic of 2020-2022 exposed these structural failures with a brutality that could not be concealed. The collapse of healthcare infrastructure in the second wave of 2021, when hospital beds, medical oxygen, and critical care facilities were unavailable across major cities, resulting in tens of thousands of preventable deaths, was a humanitarian catastrophe that was also a constitutional catastrophe: a fundamental failure of the state's obligation to protect the right to life of its citizens. The constitutional accountability for this failure has been minimal: government reports on pandemic management have been largely self-exculpatory, parliamentary

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debate has been constrained, and judicial intervention has been limited in its scope and effectiveness.

The privatization of healthcare, which has proceeded rapidly since the 1990s, has created a two-tier system in which the wealthy have access to world-class medical care while the poor must rely on an increasingly decrepit and overwhelmed public system. The constitutional framework provides no effective mechanism for addressing this inequality: the right to health under Article 21 is judicially recognized but not practically enforced against the structural choices of underfunding and privatization that create the inequality.

The National Health Policy and the Ayushman Bharat scheme represent genuine policy efforts to extend health coverage, but they operate at the margins of a structural problem: an underfunded and fragmented healthcare system that is constitutionally required to serve all citizens equally and does not. The constitutional right to health remains, for the majority of India's population, a right in name only.

6.4 Education, Constitutional Promise, and the Class Production Machine

The fundamental right to education under Article 21A, inserted by the 86th Amendment in 2002 and operationalized by the Right to Education Act of 2009, guarantees free and compulsory education to all children between 6 and 14 years. The extension of this right to early childhood and pre-primary education has been raised in recent PILs before the Supreme Court, with a bench led by Chief Justice Surya Kant issuing notices to the Centre, States, and Union Territories on a PIL seeking to extend the fundamental right to free and compulsory education under Article 21A to children aged 3 to 6 years The Prayas India in April 2026, acknowledging the connection to the National Education Policy 2020's emphasis on foundational learning.

But the constitutional right to education, even in its current limited form, has been implemented in ways that have primarily served to legitimize the existing profound inequalities in the quality of education rather than to eliminate them. The RTE Act sets minimum standards for schools, including requirements for infrastructure, teacher-pupil ratios, and teacher qualifications. But the enforcement of these standards in the vast majority of government schools remains inadequate. More fundamentally, the RTE Act's provisions do not address the fundamental inequality of the Indian education system: the parallel existence of a poorly funded government school system for the poor and an expensive private school system for those who can afford it.

This two-track education system, with its profound differences in quality, language of instruction, teacher quality, and social environment, functions as the primary mechanism for the reproduction of social inequality in India. The poor child who attends a government school in a rural area, where teachers may be absent, textbooks may be unavailable, and instruction may be conducted in a language different from the child's mother tongue, will emerge from schooling with dramatically fewer skills, credentials, and opportunities than the child who attends a private English-medium school. The constitutional right to equality of opportunity is effectively annulled by the inequality of the educational system through which opportunity is distributed.

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The courts have been unable to address this structural inequality through constitutional adjudication. They can direct minimum standards to be met in government schools, they can order the enrollment of out-of-school children, and they can require compliance with RTE norms. What they cannot do is resolve the political question of whether the state is willing to invest in the quality of public education at the level necessary to make the constitutional right to education substantively rather than formally meaningful.

CHAPTER SEVEN: THE CONSTITUTIONAL ORDER AS NATIONALIST PROJECT

7.1 The Making of a Hindu Rashtra: Constitutional Law and Majoritarian Politics

The transformation of the Indian constitutional order under the influence of Hindu nationalism is not merely a political or electoral phenomenon. It has a constitutional dimension: the use of constitutional instruments, legislative powers, executive authority, and institutional appointments to progressively reshape the normative framework of the republic in directions that are inconsistent with the constitution's secular and pluralist foundations.

The ideology of Hindutva, as articulated by V.D. Savarkar and subsequently developed by the political and cultural organizations of the Hindu nationalist movement, including the RSS, the BJP, the VHP, and allied organizations, is premised on the claim that India is fundamentally a Hindu nation, that Hindu civilization is the defining characteristic of Indian identity, and that non-Hindu minorities, particularly Muslims and Christians, are entitled to rights only insofar as they assimilate to a Hindu cultural framework. This ideological position is fundamentally incompatible with the constitutional framework, which defines India as a secular republic, prohibits religious discrimination, and protects the religious and cultural rights of all minorities.

The BJP's electoral dominance since 2014 has allowed the Hindutva project to penetrate the constitutional order through multiple channels. The abrogation of Article 370, which had given the Muslim-majority state of Jammu and Kashmir a special constitutional position, was justified in constitutional terms as the regularization of J&K's relationship with the Union, but was experienced by the Kashmiri population as the elimination of the constitutional protections that had made the state's accession to India politically possible. The conversion of J&K from a state to two Union Territories removed the constitutional autonomy that Article 370 had provided.

The Citizenship Amendment Act of 2019 created a path to citizenship for persecuted religious minorities from Afghanistan, Bangladesh, and Pakistan, but excluded Muslims from this provision. The constitutional challenge to the CAA argues that it violates Article 14's equality guarantee and Article 25's freedom of religion by making citizenship eligibility contingent on religion. The Supreme Court, despite having received thousands of petitions challenging the Act, had not definitively resolved the constitutional challenge as of early 2026, a delay that itself constitutes a constitutional problem: the longer the challenge remains unresolved, the more the Act is implemented and the more difficult it becomes to unwind its effects.

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An analysis by Human Rights Watch found that Modi made Islamophobic remarks in 110 of the 173 speeches he delivered during the 2024 Lok Sabha election campaign, Taylor & Francis Online a pattern of political discourse that, in a constitutional order where the Prime Minister is the constitutional executive head, raises serious questions about the state's compliance with its constitutional obligations of equal treatment and non-discrimination.

The growing pattern of anti-conversion legislation in BJP-governed states, the demolition of Muslim-owned properties described as "bulldozer justice" that has been widely reported in multiple states, the intensification of cow-protection laws and the violence associated with their enforcement, and the increasing social harassment and economic boycott of Muslim communities in various parts of India, all represent a pattern that critics describe as the incremental realization of the Hindutva program through the instrumentalities of the constitutional state. The constitutional framework, which prohibits religious discrimination and guarantees equal protection, has been inadequate to prevent this pattern.

7.2 Nationalist Constitutionalism and the Dismantling of Federalism

One of the structural consequences of the rise of Hindu nationalism as the dominant political force in Indian politics has been the intensification of the centralizing tendencies of the constitutional order. The BJP's national dominance, combined with its Hindutva ideological agenda of national cultural unity, has produced a politics that is systematically hostile to the forms of regional autonomy, linguistic diversity, and cultural pluralism that a genuinely federal constitutional order would protect.

The use of the Governor's office against opposition-governed states has intensified dramatically. The Tamil Nadu governor's prolonged withholding of assent to bills passed by the Tamil Nadu legislature (which led to the Supreme Court's significant 2025 ruling that a Governor cannot exercise an absolute or pocket veto under Article 200 Testbook) is one documented example of a systematic pattern in which centrally appointed governors have been used as instruments to obstruct the governance of states ruled by opposition parties.

In an advisory opinion, a five-judge Constitution Bench unanimously held that the Governor and President possess discretionary powers over bills presented for their assent under Articles 200 and 201, Supreme Court Observer a ruling that clarifies the scope of gubernatorial discretion but does not fully resolve the political problem of governors who use their constitutional position as instruments of partisan central control.

The nationalist constitutional project also manifests in the progressive centralization of educational curriculum, the promotion of a particular version of national history that emphasizes Hindu civilization and downplays or distorts the contributions of other communities and traditions, and the systematic replacement of secular and pluralist national symbols with symbols drawn specifically from the Hindu tradition. These processes, while primarily matters of political and cultural contestation, have constitutional dimensions because the constitutional framework commits the state to a secular and plural national identity that is incompatible with the exclusive Hindu nationalism that drives these processes.

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7.3 The Authoritarian Temptation and the Constitutional Architecture That Enables It

The constitutional architecture of the Indian state, as analyzed throughout this text, is systematically tilted toward the concentration of executive power. The parliamentary system, as it has operated in India, places extraordinary power in the hands of a Prime Minister who commands a parliamentary majority: the ability to legislate on most subjects without effective opposition, to control the appointment of key institutional positions, to direct the exercise of investigative and prosecutorial power, to determine the allocation of state resources, and to shape the information environment through media patronage.

When the Prime Minister also commands a dominant national party with an ideology that emphasizes national unity over regional autonomy, cultural homogeneity over pluralism, and loyalty to the leader over institutional independence, the constitutional architecture's potential for authoritarian use becomes a present and immediate danger rather than a theoretical possibility.

The comparative constitutional literature on democratic backsliding, including the seminal work of Steven Levitsky and Lucan Way ("Competitive Authoritarianism"), Milan Vaishnav and their colleagues at the Democracy in Retreat project, and the V-Dem research program, consistently identifies India as a case of significant democratic regression. Since the victory of Narendra Modi, leading the Bharatiya Janata Party (BJP), in the 2014 Indian general election, India has witnessed significant democratic backsliding. Laws on sedition, defamation, and counterterrorism have been regularly employed to crack down on critics and dissenting voices, including the detention and arrest of opposition leaders. Wikipedia

The pattern of backsliding that scholars and observers have identified includes the erosion of electoral commission independence, the use of investigative agencies against political opponents, the narrowing of civic space through legal and extra-legal pressure on civil society organizations, the intimidation of the judiciary through strategic use of the contempt power and through the reward of judicial deference, the concentration of media ownership in corporate entities with strong ties to the government, and the deployment of majoritarian nationalist rhetoric to delegitimize minority communities and political opposition simultaneously.

The BJP's capture of independent institutions, such as the Election Commission, the judiciary, and the media, reflects a shift from electoral democracy toward electoral autocracy, illustrating how backsliding often unfolds not through dramatic breakdowns but through the slow erosion of fairness in these institutions. Democratic Erosion

What is constitutionally significant about this pattern is that it does not, for the most part, involve direct violations of explicit constitutional provisions that could be challenged before the courts. It involves the use of constitutional powers (the appointment of governors and election commissioners, the exercise of prosecutorial discretion, the invocation of national security legislation) in ways that serve partisan rather than public purposes. The constitutional framework provides the tools of democratic governance, and those tools can be used by a determined authoritarian political force to hollow out democratic governance while maintaining its procedural forms.

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This vulnerability is not unique to India. But it is particularly acute in India because of the constitutional design choices that have concentrated power in the executive, that have made institutional independence dependent on convention rather than structural protection, and that have provided weak mechanisms for the enforcement of constitutional norms against a government that controls both the executive and the legislative majority.

CHAPTER EIGHT: INDIA'S NEIGHBORS, THE CONSTITUTION, AND THE FAILURE OF REPUBLICAN FOREIGN POLICY

8.1 The Neighborhood as Constitutional Failure: A Systematic Analysis

In the six decades and more since independence, India has not succeeded in building a stable, cooperative, and genuinely friendly relationship with a single neighbor. Pakistan is a nuclear-armed adversary. China is a strategic competitor with which India fought a major border war in 1962 and has had recurring military confrontations, most recently in the Galwan Valley in 2020. Nepal, which was until recently described as an exceptionally close partner, has tilted toward China after a series of Indian policy decisions that Nepali governments and citizens experienced as coercive and disrespectful. Sri Lanka has seen Indian involvement in its civil war turn into a source of resentment for both Sinhalese and Tamil communities. Bangladesh has a complex and oscillating relationship with India, shaped by the shared history of 1971 and complicated by water disputes, border tensions, and the political dynamics of Bangladeshi nationalism. Bhutan maintains a close relationship with India but one that is fundamentally asymmetric, with Bhutan's security and foreign policy subject to substantial Indian guidance. Myanmar has seen India's engagement with the military junta after the 2021 coup generate criticism from democratic movements that look to India as a natural ally.

This pattern of difficult, contested, and often adversarial neighborly relationships is not primarily the result of bad luck or historical necessity. It reflects systematic failures of Indian foreign policy that are, in several important dimensions, connected to the constitutional framework of the state.

The constitutional concentration of foreign policy authority in the Union executive, with no constitutional mechanisms for democratic deliberation, parliamentary oversight, or regional input, means that India's foreign policy has been driven primarily by the strategic calculations of the Union government and the bureaucratic priorities of the Ministry of External Affairs and the intelligence services, with minimal input from the diverse regional perspectives that India's federal structure theoretically represents.

The states that border specific neighboring countries have the most direct and consequential experience of the bilateral relationships: Tamil Nadu's relationship to the Sri Lankan Tamil question is fundamentally different from New Delhi's; West Bengal's relationship to Bangladesh is shaped by a shared language, culture, and historical memory that the Union government's Bangladesh policy often ignores; Assam's experience of migration from Bangladesh has political dimensions that cannot be adequately addressed by a central government that does not represent

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Assam's specific interests with adequate weight; Manipur, Nagaland, and Mizoram have ethnic and cultural connections to populations across the Myanmar border that the central government's border policy has historically disregarded.

The constitutional framework that places foreign and border policy entirely within Union jurisdiction, with no constitutional requirement of consultation with border states, has produced a foreign policy that is geographically blind to the regional specificities that shape the actual consequences of foreign policy choices for the people most affected by them.

8.2 The Constitution and the Kashmir Catastrophe

The Kashmir issue is, in its constitutional dimension, the most consequential failure of the Indian constitutional order. The manner in which the state of Jammu and Kashmir was integrated into the Indian Union in 1947, the constitutional framework created by Article 370 and the associated presidential orders, the failure of the Indian state to hold the promised plebiscite, the periods of direct central rule and political manipulation that have characterized the state's governance over decades, and the abrogation of Article 370 in 2019 and its reconstitution as two Union Territories, together constitute a constitutional history of extraordinary complexity and tragic consequence.

The constitutional theory of the accession of Jammu and Kashmir to India rests on the Instrument of Accession signed by Maharaja Hari Singh on October 26, 1947, in circumstances of acute military emergency (Pakistani tribal irregulars and military forces were advancing on Srinagar). The Instrument of Accession was, by the terms of the constitutional practice governing other princely state accessions, a transfer of specified sovereign powers to the Government of India in exchange for the maintenance of the Maharaja's internal sovereignty and the guarantee of certain constitutional protections. The commitment by Jawaharlal Nehru to a plebiscite, made in multiple statements and in communications to the United Nations Security Council, was never honored.

The failure to hold the promised plebiscite is not merely a diplomatic or political failure. It is a constitutional failure of the first order: the representative democracy that the Indian Constitution claims to embody was systematically withheld from the people of Jammu and Kashmir on the question of which political unit they wished to join. The constitutional promise of popular sovereignty was replaced by the strategic calculation of the national government, and the people of the valley have lived with the consequences for more than seven decades.

Article 370, whatever its limitations, represented a constitutional acknowledgment that the relationship between Jammu and Kashmir and the Union of India was special, that it had been negotiated rather than simply imposed, and that the terms of that negotiation deserved constitutional respect. The abrogation of Article 370 without the consent of the J&K legislature (which, as noted, was under suspension at the time), the conversion of the state into two Union Territories (one without a legislature), and the imposition of a prolonged communications blackout, together constitute what many constitutional scholars have described as the forcible constitutional absorption of a political entity whose population had never been given the constitutionally promised opportunity to express its democratic preference.

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The Supreme Court's judgment in In Re: Article 370 (2023), which upheld the abrogation after a remarkable delay of four years in hearing the challenge, is a constitutional judgment of deep ambiguity. The Court upheld the action on grounds that Article 370 was always intended as a temporary provision and that the President had the constitutional authority to exercise the powers he exercised. But the judgment's reasoning was criticized by several constitutional scholars for glossing over the procedural irregularities of using the Jammu and Kashmir legislature, suspended and replaced by the central administration, to concur in a process that required the state's consent; for the treatment of the conversion to Union Territories as a "temporary" measure despite its indefinite character; and for the inadequate attention to the constitutional rights of the people of Jammu and Kashmir as citizens of the republic whose constitutional position was fundamentally altered without any democratic participation on their part.

8.3 The Constitution and China: Territorial Claims, Legal Frameworks, and the Democratic Deficit

India's relationship with China is one of strategic competition, territorial dispute, and mutual suspicion that has persisted since the 1962 war and that has intensified in the period since 2017, with the Doklam standoff, the Galwan Valley clash of 2020, and the continuing tensions along the Line of Actual Control. The constitutional framework's implications for how India manages this relationship deserve attention.

The Constitution of India, through Article 1, defines India's territory as comprising the territories of the states, the Union Territories, and "such other territories as may be acquired." The definition of India's territory, including the contested territories in Aksai Chin (occupied by China) and Arunachal Pradesh (claimed by China), is thus a constitutional matter: any formal settlement of the boundary dispute that involves the cession of territory would, in the constitutional framework, require a constitutional amendment.

This constitutional rigidity creates a diplomatic problem. Territorial compromise, which most international border disputes eventually require, is extraordinarily difficult to negotiate when any compromise requires constitutional amendment. The political dynamics of constitutional amendment in India, which requires a two-thirds majority in both houses of Parliament plus ratification by at least half the state legislatures for certain provisions, means that any government considering territorial compromise with China would face nearly insuperable political and legal obstacles. This constitutional rigidity may serve national pride and the emotional satisfaction of maintaining maximalist territorial claims, but it does not serve the practical interests of the millions of people in border areas whose daily lives are affected by the military standoff along the LAC.

The parliamentary oversight of India's China policy has been minimal. The Galwan Valley clash of June 2020, in which 20 Indian soldiers were killed (the deadliest border clash with China since 1975), was handled by the government with a remarkable degree of opacity: the initial government statements about the clash were contradictory and confusing, the information provided to Parliament was limited, and the public debate was constrained by the intensity of nationalist sentiment that the government itself had cultivated. In a constitutional democracy with genuinely effective parliamentary oversight, an event of this magnitude would trigger

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sustained parliamentary scrutiny, independent inquiries, and public debate about the adequacy of India's strategic posture and border management.

8.4 Regional Hegemony, Constitutional Values, and the Responsibility to Protect

India's treatment of its smaller neighbors raises questions about the relationship between constitutional values and foreign policy that go to the heart of what kind of republic India aspires to be. The constitutional commitment to fraternity, to justice, and to the dignity of the individual is not, in the conventional understanding, an international commitment: the Constitution is a domestic document concerned with the rights of Indian citizens. But a nation's foreign policy inevitably reflects its domestic constitutional values, or reveals the gap between those values and actual policy priorities.

The 2015 economic blockade of Nepal, which India enforced for several months after Nepal adopted a new constitution that India found objectionable, was a policy that caused enormous harm to one of the poorest countries in the world, cutting off its access to essential goods including fuel, medicines, and food during a period of post-earthquake reconstruction. The constitutional values of a republic committed to human dignity and fraternity, applied in the foreign policy context, would preclude the use of economic coercion of this kind against a small, poor neighbor. The constitutional framework's silence on the standards that should govern India's relationships with neighboring states, combined with the concentration of foreign policy authority in the executive without meaningful parliamentary or public oversight, enabled this policy without any effective domestic constitutional check.

The treatment of Rohingya refugees in India illustrates a similar problem. The Rohingya, who are fleeing genocide in Myanmar, are not legally recognized as refugees by India, which has not ratified the 1951 Refugee Convention or its 1967 Protocol. The Indian government has treated Rohingya refugees as illegal immigrants subject to deportation, in a policy that several constitutional scholars and human rights organizations have argued violates the constitutional right to life and dignity, the principle of non-refoulement under international customary law, and the constitutional provision on international peace and security under Article 51.

The Supreme Court's handling of petitions challenging the proposed deportation of Rohingya refugees has been disappointing: the Court has declined to intervene decisively to protect their rights, accepting the government's national security justification without adequate scrutiny. The constitutional protection of the right to life under Article 21 does not, in the established jurisprudence, extend to non-citizens in all circumstances, but the principle that the state may not deport persons to a country where they face a serious risk of persecution and death has been accepted by the courts in other contexts and is recognized as a principle of customary international law that courts are obligated to consider.

CHAPTER NINE: THE BRITISH LEGACY AND THE INSTRUMENTS OF CONTINUED SUBJUGATION

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9.1 The Permanent Emergency of Colonial Law

The previous chapters of this textbook have repeatedly identified the colonial origins of specific constitutional and legal provisions. This chapter undertakes a more systematic analysis of what might be called the "colonial legal substrate" of the Indian constitutional order: the body of colonial legislation, colonial institutional frameworks, colonial administrative practices, and colonial constitutional principles that continue to operate within the Indian system, either incorporated directly into the constitutional framework or surviving as legislation enacted under the authority the colonial laws created.

The scale of this colonial legal inheritance is remarkable. Despite more than seven decades of independence and numerous legislative reform efforts, Indian statute books continue to contain large bodies of colonial legislation: the Indian Contract Act (1872), the Transfer of Property Act (1882), the Code of Civil Procedure (1908), the Indian Succession Act (1925), the Arbitration Act (replaced but on the model of the 1940 Act), the official Secrets Act (1923), the Telegraph Act (1885, replaced only in 2023 by the Telecommunications Act), the Dramatic Performances Act (1876), the Poison Act (1919), and hundreds more.

These are not merely historical curiosities. They are laws that continue to govern everyday legal relationships, commercial transactions, property rights, and government-citizen interactions. They were designed for a colonial administrative purpose: to create and maintain the conditions for imperial extraction, to protect imperial property and commercial interests, and to govern subject populations with minimum political friction. Their ongoing application in a republic whose Constitution claims to be founded on popular sovereignty and equal dignity is constitutionally anomalous, to say the least.

The colonial institutional inheritance is equally significant. The Indian Police Service, which provides the senior officers who lead state police forces, is a direct descendant of the Indian Police Service of the colonial era, which was itself a descendant of the police forces established by the British to control subject populations. The traditions, culture, and structural incentives of this service reflect its colonial origins: the emphasis on maintaining "law and order" rather than serving citizens, the culture of hierarchy and impunity, the structural relationship to the executive rather than to the communities the police serve.

The Indian Administrative Service, the successor to the ICS, has been more substantially reformed in its orientation and training since independence, but it retains significant features of the colonial administrative culture: the generalist tradition that places premium on administrative authority rather than technical expertise, the culture of bureaucratic distance from the governed population, the ethos of "managing" rather than "serving" the public, and the hierarchical structure that insulates senior administrators from accountability to those they govern.

The District Collector, the primary administrative authority in most of India's hundreds of districts, holds a position that is directly modeled on the colonial District Collector: a representative of central authority responsible for law and order, revenue collection, and general administration, with enormous discretionary powers and limited institutional accountability to the district's residents. The concentration of district-level administrative authority in this single

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position, responsible upward to the state and central bureaucracy and downward to no one in particular, is a constitutional design choice that has survived seven decades of independence without serious reform.

9.2 The Penal Codes and the Criminalization of Dissent

The penal codes through which the colonial state regulated subject behavior in India were explicitly designed for the control of a conquered population. The Indian Penal Code of 1860, drafted by Thomas Babington Macaulay for the British Indian administration, was built around the concept of maintaining colonial order: protecting imperial property and commercial interests, preventing organized political resistance, and providing broad discretionary powers of arrest and prosecution that could be deployed against anyone the colonial administration found inconvenient.

The provisions of the IPC that have been most extensively used against political opponents, journalists, activists, and members of marginalized communities in independent India are, for the most part, provisions that were designed in the colonial context to serve exactly these purposes. The sedition provision (Section 124A), as noted, was used against Bal Gangadhar Tilak and Mahatma Gandhi by the colonial government before being used against opposition politicians and journalists by the Indian government. The provisions on "outraging religious feelings" (Section 295A) were used by the colonial government to manage communal tensions in ways that served imperial interests; they have been used in independent India to prosecute religious minorities, dissenting religious voices, and rationalist critics.

The defamation provisions of the IPC (Sections 499 and 500), which criminalize "making or publishing" any "imputation" concerning any person, have been used extensively in independent India against investigative journalism, political criticism, and social media commentary. Criminal defamation is unusual among democracies: most liberal legal systems treat defamation as a civil matter, recognizing that the chilling effect of criminal prosecution on free speech is disproportionate and that the use of criminal law to protect reputation serves the interests of the powerful (who can initiate criminal proceedings) rather than the public interest. India's criminal defamation law, derived from the colonial penal code, has been upheld by the Supreme Court in Subramanian Swamy v. Union of India (2016), rejecting the argument that it violates the constitutional right to free speech.

The survival of these colonial penal provisions in independent India is not an accident of legislative inertia alone. It reflects a choice by successive governments to retain legal instruments that serve the same function in the republican state that they served in the colonial state: the suppression of inconvenient political activity, the silencing of criticism, and the management of social and political conflict through the threat of criminal prosecution rather than through the cultivation of genuine democratic accountability.

9.3 The Official Secrets Act and the Culture of Governmental Secrecy

The Official Secrets Act of 1923, enacted by the colonial government to protect imperial intelligence and military information from disclosure, remains in force in independent India. The

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Act criminalizes the disclosure of "official secrets," defined with sufficient breadth to include virtually any information that the government chooses to classify as sensitive. It has been used in independent India to prosecute journalists who published information about government decisions, to prevent the disclosure of information about policy choices, and to maintain a culture of governmental secrecy that is fundamentally at odds with the constitutional right to information.

The Right to Information Act of 2005 partially addressed the culture of governmental secrecy by creating a statutory right to access government information, subject to specified exemptions. The RTI Act has been one of the most significant enabling instruments of democratic accountability in modern India, allowing citizens and journalists to obtain information about government decisions, expenditures, and activities that would otherwise be permanently concealed within the bureaucratic system.

But the RTI Act is under sustained pressure. The Protection of Source and Investigative Information exemptions, the "third-party information" exemption, the national security exemption, and the exemptions for cabinet proceedings and deliberative processes have been used to deny disclosure in many cases where the democratic interest in transparency would suggest disclosure. More broadly, the current government has been criticized for its hostility to the RTI framework: amendments to the RTI Act in 2019 removed the constitutional character of the Information Commissioners (converting their appointments from the statutory independence structure established by the original Act to executive appointment at terms determined by the government), significantly weakening the institutional independence of the RTI enforcement mechanism.

The 2025 Indian electoral controversy, in which opposition allegations of electoral fraud in the 2024 general election were met with demands for disclosure of data from the Electoral Commission that the Commission declined to provide, illustrates the contemporary relevance of the transparency problem. The country's referee institutions, such as the judiciary, investigative agencies, the Election Commission of India (ECI), Lokpal, among others have been weakened through coercion, patronage, and ideological alignment with the BJP, leading to an erosion of public trust in institutions. Wikipedia

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CHAPTER TEN: THE CASE FOR A NEW CONSTITUTIONAL MOMENT

10.1 Constitutional Reform versus Constitutional Replacement: The Theoretical Framework

The argument for a new constitution for India, rather than piecemeal amendment of the existing document, raises some of the most fundamental questions in constitutional theory. What is the relationship between constitutional continuity and constitutional legitimacy? When does a constitutional order become so corrupted in its foundations, so inadequate in its institutions, and so disconnected from the needs and aspirations of those it governs, that reform within the framework is no longer adequate and a new beginning is required? And if a new constitution is

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needed, how should it be made? By whom? With what democratic mandate? And with what content?

These questions have been asked, with varying urgency and from varying political perspectives, throughout India's constitutional history. In the early years after independence, there were voices, primarily on the Left and among Ambedkarite groups, that criticized the Constitution as a document of elite interests. In the 1970s, Jayaprakash Narayan's Total Revolution movement raised questions about the adequacy of the parliamentary constitutional framework for genuine social transformation. In the 2000s and 2010s, the Anna Hazare movement against corruption raised constitutional demands that went beyond the existing framework. And in 2024, the proposal by Bibek Debroy, a member of the Prime Minister's Economic Advisory Council, that India needed a completely new constitution rather than amendments to the existing one, brought the question into mainstream political discourse.

The theoretical framework for addressing the constitution-making question draws on three distinct traditions: constitutional originalism, constitutional evolutionism, and constitutional replacement theory.

Constitutional originalism, in its strongest form, holds that the authority of a constitution derives from the act of original consent by the constituent power (the people) and that this original authority is transmitted to the constitutional text, which binds future generations. On this view, the Indian Constitution derives its authority from the Constituent Assembly's drafting and adoption and cannot be replaced without a new act of constituent power that could claim equivalent democratic legitimacy. This view is coherent but faces the historical problem identified in earlier parts of this text: the Constituent Assembly was not elected by universal suffrage and did not represent the constituent power of the Indian people in any robust democratic sense. The original authority of the Indian Constitution is therefore already constitutionally suspect.

Constitutional evolutionism holds that the constitution's meaning and application evolve through interpretation, amendment, and the development of constitutional practice, and that the constitution's legitimacy is continuously renewed through this evolutionary process rather than being fixed at any particular founding moment. The living-constitutionalist approach of the Indian Supreme Court, which has substantially expanded the content of constitutional rights through interpretation, exemplifies this approach. On this view, the constitution does not need replacement: it needs continuous evolutionary development.

Constitutional replacement theory, drawing on the work of scholars like Zachary Elkins, Tom Ginsburg, and James Melton on the comparative study of constitutions, acknowledges that constitutions have finite lifespans, that they can become obsolete, that they can be so thoroughly captured by particular political forces that they can no longer perform their fundamental functions, and that the replacement of a failed constitutional order with a new one, legitimately made, is sometimes the only adequate response to constitutional failure.

The Indian case presents elements that complicate the simple application of any of these three frameworks. The evolutionary framework has produced real constitutional development, but it

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has also, as this text has argued throughout, been inadequate to address the structural failures of the constitutional order. The replacement framework raises the political problem that the current political environment, in which Hindu nationalist politics dominates the constitutional conversation, may not be conducive to the drafting of a genuinely more democratic and pluralist constitution.

10.2 Comparative Constitutional Transitions: Lessons for India

The comparative constitutional literature on constitutional transitions offers several instructive lessons for any assessment of the possibility and desirability of a new Indian constitution.

The successful constitutional transitions of the twentieth and twenty-first centuries, including the Spanish transition from authoritarian rule (1976-1978), the South African transition from apartheid to constitutional democracy (1990-1996), the Brazilian transition from military rule to democracy (1985-1988), and more recent transitions in Tunisia (2011-2014) and Chile (2019-present, though the Chilean process ultimately failed to produce a new constitution through referendum), share several common features.

The first is the existence of a genuine political opening, a moment of crisis or transition in the existing political order, in which the previous constitutional settlement has been sufficiently discredited that a broad coalition of political forces can agree on the need for a new beginning. In South Africa, the collapse of apartheid's political legitimacy created this opening. In Spain, the death of Franco and the recognition by the political elite of the unsustainability of the authoritarian system created it. In Brazil, the political exhaustion of military rule created it.

The second is a process of constitution-making that is genuinely inclusive, that brings together representatives of the diverse political, social, and cultural forces in the society, that allows meaningful participation by civil society and ordinary citizens, and that produces a document that can claim broad democratic legitimacy because of the process through which it was made.

The third is constitutional content that addresses the structural failures that made the transition necessary: not merely the formal structures of government but the power relations, the resource distribution mechanisms, and the rights frameworks that determine whether the new constitutional order will genuinely serve the people who live under it.

India has not experienced the kind of systemic political crisis that has historically opened the space for constitutional replacement in other countries. The Indian constitutional order, despite its manifold failures, has maintained sufficient political functionality to prevent the complete delegitimization that would create a reform moment. Elections continue to be held, governments change, courts continue to function, and the basic machinery of the constitutional state continues to operate. This institutional continuity is, in many respects, a genuine achievement that India should not take for granted given the experiences of neighboring states. But it also means that the momentum for fundamental constitutional reform is constrained by the absence of the kind of acute crisis that drives transformative change.

10.3 What a New Indian Constitution Should Contain

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If the argument for fundamental constitutional reform is accepted, the question becomes what a reformed or new Indian constitution should contain. The analysis throughout this textbook suggests a number of constitutional design principles that should guide this process.

The first and most fundamental is the principle of genuine popular constituent power. A new Indian constitution should be drafted through a process that is genuinely representative of the diversity of Indian society, that includes meaningful participation by those groups who were excluded or marginalized in the 1950 constituent assembly, including tribal communities, dalits, women, the working class, religious minorities, and the regional peripheries, and that can credibly claim the democratic mandate of popular sovereignty rather than elite representation.

The second principle is the constitutionalization of socio-economic rights as genuinely justiciable rights, subject to appropriate standards of review that account for the institutional competence of courts. The South African model, which makes socio-economic rights justiciable while allowing for progressive realization subject to available resources and review under a reasonableness standard, provides a workable template. A new Indian constitution should include justiciable rights to food, water, housing, healthcare, education, and social security, with remedies that are accessible to all citizens and not merely to those who can afford constitutional litigation.

The third principle is the reconstruction of the federal framework to create genuine fiscal and legislative federalism. This requires a fundamental rethinking of the division of powers in the Seventh Schedule, the creation of a fiscal transfer mechanism that genuinely equalizes financial capacity between rich and poor states while preserving state fiscal autonomy, the reform of the Governor's office to eliminate its character as an instrument of central political control, and the creation of constitutional mechanisms for cooperative federalism that give state governments a genuine voice in national policy-making.

The fourth principle is the institutional independence of democratic institutions, guaranteed not merely by conventions and practices but by structural design. An independent judiciary, free from both political manipulation of appointments and from the opacity and unaccountability of the collegium system, requires a constitutionally established appointments commission with clear criteria, transparent process, and meaningful representation of diverse interests. An independent electoral commission requires security of tenure, transparent appointment processes, and genuine investigative and enforcement powers. An independent anti-corruption mechanism requires constitutional status, genuine independence from the executive, and adequate powers of investigation and prosecution.

The fifth principle is the constitutional regulation of political parties, including requirements for internal democracy, transparency of financing, limits on campaign spending, and public funding mechanisms that reduce dependence on corporate money. The failure of the existing constitutional framework to regulate political parties has been catastrophic for the quality of Indian democracy, as the electoral bonds scandal and the widespread criminalization of politics demonstrate.

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The sixth principle is the constitutionalization of the right to information, environmental rights, and digital rights, including the right to privacy, the right to free and open internet access, and protection against arbitrary surveillance, in terms that reflect the technological realities of the twenty-first century rather than the paper-and-post world of 1950.

The seventh principle is the explicit constitutionalization of equality and non-discrimination standards that go beyond the existing framework's protections, including explicit constitutional prohibition of caste discrimination in all domains of life (not merely in state action), constitutional protection of LGBTQ+ rights as an explicit provision rather than a judicial inference, and constitutional guarantees of women's rights that address the patriarchal structures of family law and social life rather than merely prohibiting formal state discrimination.

The eighth principle is the reform of the constitutional emergency framework to eliminate the possibility of its use for political purposes, to require the most stringent standards of justification for any suspension of fundamental rights, to provide genuine judicial oversight of emergency declarations, and to establish clear sunset clauses and renewal requirements that prevent the normalization of emergency powers.

10.4 The Obstacle of Constitutional Politics: Who Decides on Constitutional Change?

The most formidable obstacle to fundamental constitutional reform in India is not theoretical but political. The constitutional amendment process requires a two-thirds majority in both houses of Parliament plus, for certain provisions, ratification by at least half the state legislatures. In the current political environment, this level of consensus is available only if the ruling coalition at the Centre is either itself committed to genuine reform (which is historically unlikely for any government in power, since every government benefits from the existing constitutional framework) or if there is sufficient opposition pressure to force reform as a matter of political necessity.

The movement for a new constitution or fundamental constitutional reform thus requires a political movement that is capable of generating democratic pressure for change: a civil society movement for constitutional reform analogous to the major constitutional reform movements of other countries. The Ambedkarite tradition has consistently generated demands for constitutional reform from below. The women's movement has been a persistent force for specific constitutional changes. The tribal rights movement has generated demands for genuine constitutional recognition of indigenous rights. The environmental movement has raised constitutional questions about the adequacy of the existing framework for the protection of ecological rights.

The challenge is to bring these diverse demands together into a coherent program for constitutional reform that can build sufficient political support to achieve change. This is a challenge of coalition-building across the profound social divisions of Indian society, of constructing a political agenda that can command support across caste, religious, regional, and class lines, and of doing so in a political environment that is increasingly characterized by majoritarian nationalism, communal polarization, and the suppression of dissenting voices.

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The historical precedents are not entirely encouraging. Every major constitutional reform in India has required either a political crisis (the Forty-Fourth Amendment, enacted after the Emergency), a mass movement (the reservations jurisprudence, shaped by decades of dalit and OBC political mobilization), or a judicial innovation that forced legislative response (the constitutional recognition of environmental rights, which preceded the legislative framework). Voluntary constitutional reform, undertaken by governments in power without political pressure, is nearly unknown in the Indian constitutional experience.

But the possibility of constitutional change should not be dismissed. The V-Dem India Report 2024 ranks India as 103rd in the Participatory Component Index, reflecting significant deterioration in citizen political participation. But that 103rd position also reflects a society in which political consciousness, civil society organization, and the tradition of public protest remain substantial forces. The farmers' protest of 2020-2021, which forced the withdrawal of three controversial farm laws despite the government's initial insistence on their legality and policy necessity, demonstrated that constitutional politics in India can still be shaped by organized popular movements.

The students and young people of India, who are navigating an economic and social landscape of profound inequality and limited opportunity within a constitutional framework that was designed for a different era, represent the most important constituency for constitutional reform. Their constitutional literacy, their awareness of the gap between constitutional promise and political reality, and their willingness to demand genuine accountability will shape the possibilities of constitutional change in the coming decades.

10.5 The Jurisprudence of Constitutional Failure and the Ethics of Replacement

The ethical and jurisprudential case for constitutional replacement, as distinct from the political and practical arguments, rests on the idea that constitutional legitimacy is not merely a matter of formal derivation from an original constituent act but is continuously produced and continuously tested by the constitutional order's capacity to deliver on its own promises.

John Rawls, in his later work on political liberalism and the idea of public reason, argued that constitutional essentials must be capable of being justified to all citizens on grounds that all citizens can in principle accept. A constitutional order that systematically excludes certain groups from the full benefits of citizenship, that structures the conditions of exploitation for the majority in the service of the minority, and that uses the language of rights and democracy to conceal a reality of structured domination, fails this test of justification. It is, in Rawls's terms, a "modus vivendi" rather than a constitutional settlement: an arrangement that the powerless tolerate because they have no effective alternative, not one they accept because they recognize its underlying fairness.

Ronald Dworkin's interpretive jurisprudence suggests that a constitution should be interpreted as an expression of the underlying moral principles of the political community, and that when the constitutional text or its interpretive traditions are deeply inconsistent with those principles, the interpreter's obligation is to the principles rather than the text. Applied to India, this suggests that when the constitutional text authorizes practices (preventive detention, indefinite undertrial

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imprisonment, the compulsory acquisition of tribal land without genuine consent) that violate the moral principles of equality, dignity, and justice that the Preamble and the fundamental rights chapter announce, the constitutional interpreter should read the text against those practices rather than in their favor.

Lon Fuller's account of the morality of law holds that a legal system must satisfy certain formal requirements, including generality, promulgation, non-retroactivity, clarity, non-contradiction, possibility of compliance, constancy, and congruence between official action and declared rule, to be a genuine legal system rather than an arbitrary exercise of power. Fuller's "inner morality of law" criteria can be applied to constitutional systems as well as to ordinary legal systems: a constitutional order that systematically fails to comply with its own declared principles, that is not genuinely congruent in its institutional behavior with its textual commitments, that cannot be reasonably complied with by those it governs because the resources necessary for compliance are systematically denied to them, is failing the basic test of legal morality.

The application of these theoretical perspectives to the Indian constitutional order suggests that the ethical case for fundamental constitutional reform is strong. The Constitution has not failed merely as a matter of implementation or political will: it has structural features that systematically prevent it from fulfilling its own promises, and those structural features require constitutional rather than merely legislative or political remedy.

10.6 British Responsibility and the Constitutional Reckoning

The analysis of the British legacy in Indian constitutional design raises a question that is not merely historical but has contemporary constitutional and political significance: what responsibility does Britain bear for the constitutional failures that British design choices have contributed to?

The question is not rhetorical. When British constitutional designers deliberately built into the Government of India Act of 1935, and when Indian constitutional framers educated in British constitutional traditions deliberately carried those designs into the 1950 Constitution, the emergency powers that have enabled constitutional dictatorship, the preventive detention framework that has imprisoned hundreds of thousands of innocent people, the centralizing federal design that has frustrated genuine popular self-governance, the police system that has perpetuated colonial brutality, and the administrative framework that has maintained colonial habits of governance, they embedded in the constitutional order a set of instruments of domination that were designed for colonial purposes and have continued to serve analogous purposes of control in the republican state.

The argument for a British reckoning with the constitutional consequences of colonialism in India is not merely a matter of historical justice, though it is that too. It is also a matter of contemporary political responsibility. Britain continues to maintain constitutional, legal, and institutional relationships with India that have their origins in the colonial period. British law schools continue to train Indian lawyers in British constitutional traditions that carry the colonial framework forward. British legal consultancies and academic institutions continue to influence Indian legal development. The recognition by these institutions that the constitutional framework

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they helped to design and transmit has been an instrument of domination as much as of liberation would be an important contribution to the constitutional reckoning that India needs.

More concretely, India's post-colonial constitutional reform could benefit from the explicit acknowledgment by British constitutional authorities that specific features of the Indian Constitution, including the preventive detention provisions, the emergency framework, the centralizing federal design, and the Police Act, were designed for colonial purposes of control rather than for the purposes of republican self-governance, and that their revision or replacement is not merely constitutionally permissible but constitutionally necessary for the fulfillment of the republican promise.

This is not the call for revenge or compensation that the politics of colonial grievance sometimes suggests. It is the call for intellectual and institutional honesty: for British constitutional scholars, legal institutions, and political authorities to acknowledge the constitutionally damaging character of specific colonial inheritances and to support, rather than resist, the project of constitutional reform that would eliminate them.

10.7 The Path Forward: A Constitutional Manifesto

The analysis in this chapter and throughout this text leads to the following conclusions about the path forward for Indian constitutionalism.

In the short term, within the existing constitutional framework, the most important priority is the restoration and strengthening of institutional independence, particularly the independence of the judiciary, the electoral commission, and investigative agencies. The judicial appointments crisis, which has produced a judiciary that is socially homogeneous, institutionally opaque, and inadequately independent of informal political influence, requires at minimum a reformed judicial appointments process that is transparent, merit-based, diverse, and insulated from both executive political influence and collegium networking influence. The Court expressed concern over attempts to undermine judicial independence through legislative changes, Sleepy Classes a concern that must translate into institutional reform as well as judicial resistance.

In the medium term, the constitutional amendment process should be used to address specific structural failures that have been identified throughout this text: the strengthening of fundamental rights protections to include socio-economic rights; the reform of the emergency provisions; the constitutional regulation of political parties and electoral finance; the strengthening of the panchayati raj system and its financial base; the constitutional protection of press freedom and digital rights; and the explicit constitutional prohibition of caste discrimination in private as well as public domains.

In the long term, the project of a new constitutional moment, one that is genuinely democratic in its process and genuinely transformative in its content, should be kept alive as a political aspiration and developed as a constitutional program. A new constituent assembly, elected by universal suffrage with specific representation for marginalized communities, mandated to draft a new constitution that addresses the structural failures documented in this text, and required to produce a document that is submitted to the people in a referendum for popular ratification,

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would represent a genuine act of popular constituent power: the people of India finally writing their own constitution rather than living under the constitution that their colonizers wrote for them.

This is not an immediate political possibility. But it is a constitutional necessity, and the gap between necessity and possibility is the space in which democratic politics operates.

CHAPTER ELEVEN: RECENT DEVELOPMENTS AND THE CONTEMPORARY CONSTITUTIONAL MOMENT

11.1 The 2024 Elections, Coalition Government, and the New Constitutional Landscape

The 2024 Indian general election produced a result that changed the constitutional landscape in important ways. The BJP, which had governed with a single-party majority since 2014 and had used that majority to drive an agenda of centralization, majoritarian nationalism, and institutional change, fell short of a majority on its own and was required to govern as a coalition dependent on the support of regional parties. This shift in the political configuration created, at least in principle, a different constitutional environment: one in which the concentration of executive power in a single dominant party is moderated by the need for coalition management and in which regional partners have the leverage to resist some of the more aggressive centralizing tendencies of the BJP's unilateral majority period.

The constitutional implications of coalition government in India have generally been considered positive from a democratic standpoint: coalition governments are less able to dominate institutional life, more likely to tolerate political diversity, and more constrained in their ability to use constitutional amendment processes to entrench their preferences. The 1990s, which saw a series of coalition governments at the Centre, were a period of significant constitutional development in local self-government (the 73rd and 74th Amendments), electoral finance law, and judicial reform.

But coalition government is not a substitute for constitutional reform. The structural problems of the Indian constitutional order, the centralizing design, the weak institutional independence, the inadequate socio-economic rights framework, the colonial penal codes, the inadequate federal fiscal framework, cannot be resolved merely by a shift in the political configuration of the ruling coalition. They require deliberate constitutional change, and coalition governments, which are often consumed by the management of their own internal tensions, have historically been as disinclined to fundamental constitutional reform as single-party majority governments.

The 2025 Indian electoral controversy Wikipedia that followed the 2024 elections, involving allegations of electoral fraud and the collusion of the ECI with the ruling party, raised constitutional questions about the integrity of the democratic process that go beyond the specific allegations to the broader problem of the constitutional adequacy of India's electoral administration. Whether or not the specific allegations are proven, the fact that they are made

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with sufficient credibility to generate extensive public controversy and judicial attention indicates a systemic problem of institutional trust that the constitutional framework must address.

11.2 The Supreme Court in 2024-2026: Between Courage and Deference

The Supreme Court of India in the period 2024-2026 has delivered a series of judgments that reflect the continuing tension between institutional independence and political deference that has characterized the Court throughout its history. On some issues, the Court has shown constitutional courage: the striking down of the electoral bonds scheme in early 2024, the rulings on gubernatorial power in Tamil Nadu and subsequently, and the various judgments on prisoners' rights and bail have been constitutionally important.

But on others, the Court has been criticized for continued deference. The prolonged delay in hearing petitions challenging the Citizenship Amendment Act, which had accumulated by early 2026 without definitive resolution, was widely criticized by constitutional scholars as an institutional failure of the Court's fundamental role as enforcer of constitutional rights against majority-driven legislative action. The pattern of listing such cases for hearing and repeatedly adjourning them, while the legislation is implemented and its effects become increasingly difficult to reverse, is a form of de facto validation of the legislation without the institutional honesty of explicit upholding.

The right to digital access recognized as a fundamental right under Article 21, especially for persons with disabilities Sleepy Classes in a 2025 ruling, represents the Court's continuing creativity in expanding the content of constitutional rights to address contemporary technological realities. The Court directed the government to ensure inclusive KYC methods and accessibility features, extending constitutional equality obligations to the digital domain in ways that are constitutionally significant for India's increasingly digital economy and governance systems.

The ruling on the Speaker's non-immunity in defection cases, which held that the Speaker exercising power under the Tenth Schedule is a Tribunal and thereby bound to decide disqualification petitions in a timely manner, Supreme Court Observer addresses one of the chronic dysfunctions of India's anti-defection law: the Speaker's politically motivated delays in deciding defection petitions, which allow defecting legislators to continue in office (or to delay the consequences of defection) for political convenience.

These judicial developments are significant. But they do not address the fundamental structural problems of the Indian constitutional order. They are incremental corrections of specific institutional dysfunctions within a framework that remains, in its basic architecture, the one inherited from 1950 with its colonial design features substantially intact.

11.3 Constitutional Theory in 2025-2026: The Global Conversation and India's Place In It

The global conversation about constitutional design in 2024-2026 reflects several developments that are directly relevant to the Indian constitutional debate.

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The first is the growing body of comparative constitutional scholarship on democratic backsliding, which has moved beyond the early focus on dramatic institutional collapse to a more sophisticated analysis of the gradual erosion of democratic norms through legal and procedural means. The work of Tom Ginsburg and Aziz Huq ("How Democracies Die"), Steven Levitsky and Daniel Ziblatt, Tarunabh Khaitan on "killing a constitution with a thousand cuts," and the V-Dem research program has produced a rich body of analysis that directly applies to the Indian case. This scholarship consistently identifies the features of the Indian constitutional order that make it vulnerable to the kind of incremental authoritarian capture that India has experienced: the weak institutional independence protections, the concentrated executive power, the inadequate civil society space guarantees, and the fusion of party and state that the parliamentary system enables.

The second is the emerging scholarship on "constitutional resilience": the features of constitutional design that enable constitutional orders to survive and resist authoritarian pressure. This scholarship, synthesized in works by scholars including Tom Ginsburg and Aziz Huq, identifies several design features that correlate with constitutional resilience: strong independent courts with effective enforcement powers, genuinely competitive elections with independent administration, a robust civil society with constitutional protection, an independent press, effective anti-corruption mechanisms, and genuinely federal structures that distribute power across multiple levels and create multiple veto points against authoritarian consolidation.

India's constitutional order scores poorly on most of these indicators: independent courts are compromised by the collegium's opacity and the judiciary's periodic deference, electoral independence is questioned by the ECI controversy, civil society space has narrowed significantly, press freedom has deteriorated, anti-corruption mechanisms have been captured, and federalism is more nominal than real. The constitutional resilience literature thus reinforces the conclusion that fundamental structural reform is necessary rather than optional.

The third is the emerging scholarship on "socio-economic constitutionalism" and the growing recognition in comparative constitutional theory that political and civil rights are insufficient without justiciable socio-economic rights. The South African Constitutional Court's jurisprudence on the right to housing, food, water, and healthcare, the Inter-American Court of Human Rights' expanding jurisprudence on socio-economic rights, and the theoretical work of scholars including Sandra Liebenberg, Katharine Young, and Jeff King on the justiciability of socio-economic rights, have established that the technical objections to socio-economic rights justiciability can be overcome through appropriate doctrinal design. India's constitutional framework, which treats socio-economic rights as non-justiciable directives, is out of step with the best contemporary thinking in constitutional theory.

The fourth development is the emerging constitutional scholarship on ecological rights and environmental constitutionalism. The recognition that the constitutional right to a clean environment is a fundamental right, not merely a directive principle, has been established in Indian jurisprudence. But the constitutional framework for environmental governance remains inadequate for the challenges of climate change, biodiversity loss, and ecological crisis that represent the defining constitutional challenges of the twenty-first century. Several countries have enacted constitutional provisions that explicitly recognize the rights of nature, that impose

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constitutional obligations for climate action, and that create enforceable rights of current and future generations to a healthy environment. India's constitutional framework, designed in 1950, has no provisions that address the climate emergency or the constitutional obligations it imposes.

11.4 The Demand for Reform: Civil Society, Legal Advocacy, and the Democratic Conversation

The conversation about constitutional reform in India is not confined to academic scholarship. It is alive in civil society, in the courts, in journalism, and in the political margins, even if it has been largely excluded from the mainstream political agenda of the dominant parties.

The People's Union for Civil Liberties, the People's Union for Democratic Rights, the Indian Association for People's Lawyers, the National Campaign for Dalit Human Rights, the National Alliance for People's Movements, and dozens of other organizations and networks have articulated specific demands for constitutional reform grounded in the experience of their constituencies. The constitutional demands of the Indian women's movement, the dalit movement, the adivasi rights movement, the peasants' movement, the rights-based development organizations, and the press freedom advocates together constitute a comprehensive program for the fundamental reconstruction of the constitutional order.

These demands, while diverse in their specific content, share common themes: the strengthening of substantive equality guarantees against both state and private discrimination; the extension of justiciable rights to socio-economic entitlements; the genuine empowerment of local self-government; the protection of press freedom and civil society space; the reform of the criminal justice system to eliminate colonial brutality and class bias; the strengthening of institutional independence; and the genuine rather than merely formal federalization of the Indian state.

The challenge of translating these demands into political and constitutional action is the central challenge of Indian democratic politics in the coming years. The analysis in this textbook has aimed to contribute to that translation by providing a systematic account of the constitutional failures that make reform necessary, the theoretical frameworks that can guide the content of reform, and the historical and comparative precedents that illuminate the possibilities and limits of constitutional change.

11.5 The Constitutional Consciousness of the People

There is, finally, a dimension of the constitutional reform question that this textbook cannot adequately address but must acknowledge: the constitutional consciousness of the Indian people themselves. Constitutional reform, if it is to be genuine, cannot be imposed from above by academic scholars, activist lawyers, or even enlightened political leaders. It must be demanded from below by citizens who understand their constitutional rights, who have experienced the gap between constitutional promise and political reality, and who are prepared to organize politically for constitutional change.

The constitutional consciousness of ordinary Indian citizens is a complex and contested phenomenon. On the one hand, surveys consistently show high levels of formal attachment to

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democratic and constitutional values: most Indians express support for democracy, free elections, freedom of speech, and equality. On the other hand, the same surveys reveal that many citizens simultaneously support political leaders who undermine these values in practice, that the identification of constitutional failure is often channeled through communal or caste frameworks rather than through a universalist constitutional framework, and that the understanding of constitutional rights as rights that belong equally to all citizens, regardless of religion, caste, gender, or region, is incompletely realized in political culture.

Building the constitutional consciousness that genuine reform requires is itself a constitutional project, connected to but larger than the formal project of constitutional amendment or replacement. It requires constitutional education that goes far beyond the civics classroom, that connects constitutional provisions to the lived experience of citizens, that makes visible the structural mechanisms by which the constitutional order fails them, and that equips them with the analytical tools to demand accountability.

It requires a constitutional jurisprudence that speaks to citizens in their own languages, that is accessible to those who are not lawyers, and that builds a culture of rights-consciousness from the ground up rather than from the Supreme Court down.

And it requires a politics that is genuinely constitutional: that makes the fundamental law of the republic the object of democratic contestation rather than the exclusive preserve of lawyers and academics, that holds politicians accountable for their constitutional conduct rather than merely their policy choices, and that treats the Constitution as a living instrument of popular self-governance rather than a sacred text to be interpreted by an elite priesthood.

This constitutional politics is the only one adequate to the scale of India's constitutional failure and the depth of its constitutional aspiration. It is the politics of a people finally claiming the sovereignty that their Constitution has always promised but never fully delivered.

CONCLUDING COMMENTARY: THE CONSTITUTION AT A CROSSROADS

The Constitution of India stands, in 2026, at a crossroads more consequential than any it has faced since the Emergency of 1975. The democratic backsliding documented by every credible international index, the institutional erosion described by scholars across the political spectrum, the systematic victimization of marginalized communities documented by the courts and human rights organizations, the corruption of the electoral process and the political financing system, the nationalist capture of the constitutional vocabulary, and the continuing inadequacy of the constitutional framework for the social and economic rights of the majority, all of these constitute a constitutional crisis that demands a constitutional response.

The response will not come from within the existing political system, which has too many vested interests in the perpetuation of the constitutional status quo. It must come from the people of India themselves, who are both the victims of the constitutional order's failures and the ultimate source of the constituent power that can reconstitute it.

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This textbook has argued throughout that the Indian Constitution is not merely imperfect but structurally inadequate: that it bears the imprint of colonial design in ways that cannot be fully overcome by interpretation and incremental amendment, that its institutional framework enables rather than prevents the concentration of unaccountable power, that its rights framework protects formal liberty rather than substantive equality, and that it must be fundamentally reformed or replaced if it is to fulfill the promise of its Preamble.

The argument is not made in despair. It is made in the conviction that India's people, who have survived two thousand years of conquest, colonial subjugation, and social oppression, have the moral and political resources to build a constitutional order that is genuinely their own: one that distributes power rather than concentrates it, that protects the most vulnerable rather than serving the most powerful, that builds genuine equality rather than formal liberty, and that makes of the Indian republic what its founders promised and its citizens deserve: a just, free, and fraternal society.

The path from the Constitution that India has to the Constitution that India needs is long and uncertain. But the journey begins with clear-eyed analysis of where we are, honest acknowledgment of how we got here, and the democratic courage to demand and build something better.

That is what this textbook has attempted to provide: not a eulogy for the Constitution as it is, but a map toward the Constitution that the people of India have always deserved.

End of Part Seven

Part Eight will address: The Constitutional Framework of Environmental Rights, Climate Justice, and Ecological Governance in India.

Note on Sources and Further Reading

The analysis in this part draws on the following bodies of scholarship, case law, and empirical research:

Granville Austin, "The Indian Constitution: Cornerstone of a Nation" (Oxford University Press, 1966) and "Working a Democratic Constitution" (Oxford University Press, 1999). Upendra Baxi, "The Future of Human Rights" (Oxford University Press, 2006). Ambedkar's speeches in the Constituent Assembly, collected in "Constituent Assembly Debates" (Government of India). Supreme Court judgments cited throughout including Kesavananda Bharati (1973), ADM Jabalpur (1976), Maneka Gandhi (1978), Indra Sawhney (1992), PUCL v. Union of India (2001), Puttaswamy (2017), Association for Democratic Reforms (2024), State of Tamil Nadu v. Governor (2025), and the Tribunals Reforms cases of 2024-2025. V-Dem Institute Annual Democracy Reports 2021-2024. Reporters Without Borders World Press Freedom Index 2023-

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2025. National Crime Records Bureau Prison Statistics India 2022. The Oxfam India Inequality Reports 2022-2024. The People's Union for Civil Liberties documentation of civil liberties violations. National Human Rights Commission Annual Reports. The Forest Rights Act implementation reports of the Ministry of Tribal Affairs. National Campaign Against Torture reports on custodial violence. The work of Christophe Jaffrelot on Hindu nationalism and democratic backsliding. The work of Tarunabh Khaitan on party-state fusion and constitutional erosion. The comparative constitutional scholarship of Tom Ginsburg, Aziz Huq, Zachary Elkins, and James Melton on constitutional design and democratic resilience. Sandra Liebenberg and Katharine Young on socio-economic constitutionalism. Roberto Unger and Duncan Kennedy on critical legal theory. The postcolonial jurisprudence of Ratna Kapur and Ratna Lal Shrivastava. The V-Dem India Country Report 2024.

Glossary of Key Terms Used in Part Seven

Constitutional Victimhood: The condition in which citizens suffer systematic harm that is enabled, legitimized, or concealed by the constitutional framework rather than prevented and remedied by it.

Constituent Power: The ultimate political authority that creates and can recreate constitutional orders, theoretically residing in "the people" but practically exercised by institutional representatives of varying democratic legitimacy.

Constitutional Resilience: The capacity of a constitutional order to maintain democratic norms and institutions against authoritarian pressure, correlated with specific design features including judicial independence, competitive elections, civil society protection, press freedom, and genuine federalism.

Socio-Economic Constitutionalism: The constitutional framework that makes social and economic rights justiciable, enforceable by courts, rather than merely aspirational, associated with the South African model and the emerging global consensus in constitutional theory.

Democratic Backsliding: The gradual deterioration of democratic norms and institutions through legal and procedural means, without formal constitutional rupture, as documented by V-Dem, Freedom House, and comparative constitutional scholars in relation to India since 2014.

Ecological Constitutionalism: The constitutional framework that recognizes environmental rights, climate obligations, and intergenerational justice as justiciable constitutional commitments rather than merely policy aspirations.

Colonial Legal Substrate: The body of colonial legislation, institutional frameworks, administrative practices, and constitutional principles that continue to operate within the Indian system, either incorporated directly into the constitutional framework or surviving as legislation with colonial origins.

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Electoral Autocracy: The V-Dem classification for a political system in which elections are held but their fairness and competitiveness are systematically compromised through the erosion of institutional independence, civil society space, press freedom, and electoral integrity.

PART EIGHT: THE ECOLOGICAL CONSTITUTION AND THE POLITICS OF ENVIRONMENTAL BETRAYAL

Environmental Rights, Climate Justice, Ecological Governance, and the Constitutional Architecture of Natural Destruction

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PREFACE TO PART EIGHT

There is a particular cruelty in the way that India's constitutional order has handled the environment. The cruelty is not obvious at first. It is not written into any single provision or contained in any single judgment. It is structural. It is systemic. And it operates through the gap between the extraordinary rhetorical richness of India's environmental jurisprudence and the catastrophic material reality of the Indian environment, which is, by every credible scientific and empirical measure, one of the most severely degraded in the world.

India's Supreme Court has produced some of the most philosophically sophisticated environmental jurisprudence of any court in the world. It has invoked the public trust doctrine, the precautionary principle, the polluter pays principle, the principle of intergenerational equity, the doctrine of sustainable development, and, most recently in the landmark 2024 judgment in M.K. Ranjitsinh v. Union of India, recognized the right to be free from the adverse effects of climate change as a constitutional fundamental right under Articles 21 and 14. These are intellectually serious achievements. They are contributions to the global development of environmental constitutionalism that deserve genuine recognition.

And yet India has, as of 2025, fourteen of the world's twenty most polluted cities by air quality. India has lost approximately one-third of its forest cover since independence. Its rivers are among the most severely polluted in Asia. Its groundwater is being extracted at rates that are chronically unsustainable. Its coastal and marine environments are under acute pressure from industrial, agricultural, and urban development. Its wildlife is under siege from habitat destruction, poaching, and the expansion of the agricultural and mining frontiers into remaining wild areas. Its climate vulnerability is extraordinary: India is among the countries most severely exposed to the combined consequences of sea level rise, increased monsoon variability, glacier retreat in the Himalayas, increased frequency and severity of extreme heat events, and the threats to agricultural productivity that these changes entail.

The gap between the constitutional promise and the ecological reality is not accidental. It is the product of deliberate choices, of the constitutional design of a state that was conceived as an engine of industrial development and extraction, of the political economy that has made

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environmental regulation a subordinate consideration to industrial growth and electoral finance, of the institutional failures that have allowed environmental governance to be captured by the interests it was meant to regulate, and of the colonial inheritance that treated the natural world as a resource to be extracted rather than a commons to be held in trust.

This part of the textbook undertakes a comprehensive analysis of the constitutional framework of environmental governance in India: its historical origins, its theoretical foundations, its institutional architecture, its systematic failures, and the reforms that are necessary if the ecological crisis that threatens the lives and livelihoods of hundreds of millions of Indian citizens is to be addressed with the seriousness it demands.

The analysis draws on the tradition of ecological constitutionalism developed by scholars including Klaus Bosselmann, James May, Erin Daly, and Louis Kotzé; on the Indian environmental jurisprudence developed through decades of Supreme Court and High Court adjudication; on the global comparative environmental law developed by scholars including Philippe Sands, Alan Boyle, and Daniel Bodansky; on the theoretical frameworks of political ecology developed by scholars including Ramachandra Guha, Madhav Gadgil, and Sunita Narain; and on the emerging scholarship at the intersection of postcolonial theory and environmental governance developed by scholars including Usha Natarajan and Karin Mickelson.

The argument of this part is that India's environmental constitutional order is not merely inadequate but constitutively corrupted: that the colonial inheritance of a state designed for resource extraction, the postcolonial inheritance of a development model premised on the exploitation of natural resources for industrial growth, and the contemporary political economy of environmental corruption together constitute a system of constitutional environmental governance that has systematically victimized the most vulnerable communities in India while serving the interests of the most powerful, and that fundamental constitutional reform is necessary to reverse this pattern.

CHAPTER ONE: THE CONSTITUTIONAL ARCHITECTURE OF ENVIRONMENTAL GOVERNANCE: FOUNDATIONS, PROVISIONS, AND THEIR INHERENT CONTRADICTIONS

1.1 The Constitutional Text and Its Ambiguities

The constitutional provisions relevant to environmental governance in India are spread across several parts of the document, reflecting not a coherent environmental constitutional design but a series of legislative and interpretive accretions that have built up over more than seven decades of constitutional evolution.

The original Constitution of 1950 contained no explicit provisions concerning the environment, the protection of natural resources, or the rights of citizens in relation to their ecological surroundings. This is not surprising given that the Constitution was drafted in 1949 and 1950,

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before the modern environmental movement had established the conceptual vocabulary that is now standard in environmental constitutional discourse. The Stockholm Conference on the Human Environment in 1972, the Brundtland Commission Report of 1987, the Rio Earth Summit of 1992, the Kyoto Protocol, the Paris Agreement, and the body of international environmental law that these instruments generated were all in the future when the Constituent Assembly completed its work.

The constitutional provisions concerning the environment were added primarily through the Forty-Second Amendment of 1976, which inserted Article 48A into the Directive Principles and Article 51A(g) into the Fundamental Duties chapter.

Article 48A provides that the state shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country. Article 51A(g) imposes on every citizen the fundamental duty to protect and improve the natural environment including forests, lakes, rivers, and wildlife and to have compassion for living creatures.

These provisions were inserted during the Emergency period of 1975 to 1977, a fact that carries its own irony: some of the most significant environmental constitutional provisions in the Indian Constitution were enacted by a government that had suspended democratic governance and was simultaneously authorizing massive industrial and infrastructure projects with minimal environmental oversight. The Emergency government of Indira Gandhi, which had suspended fundamental rights and imprisoned political opponents, was simultaneously enacting constitutional duties to protect the natural environment. The coexistence of environmental constitutional rhetoric with environmental destruction is thus not a contemporary phenomenon but a founding paradox of India's environmental constitutionalism.

The constitutional provisions on the environment are supplemented by the Seventh Schedule's distribution of legislative powers between the Union and the states. Entry 17 of the State List covers water, that is, water supplies, irrigation and canals, drainage and embankments, water storage, and water power subject to the provisions of List I with respect to regulation and development of inter-State rivers and river valleys. Entry 6 of the Concurrent List covers forests, and Entry 17B covers protection of wild animals and birds. Entry 13 of the Union List covers participation in international conferences, associations, and other bodies and implementation of decisions made thereat, giving the Union the authority to implement India's international environmental treaty obligations.

This distribution of legislative powers creates a constitutional framework for environmental governance that is, like the broader federal framework, tilted toward the Union in practice even while formally distributing environmental subjects between the Union and the states. The Union's authority over inter-State rivers, over participation in international environmental agreements, over the regulation of industries whose operations cross state boundaries, and over central public sector enterprises in mining, energy, and industry gives it controlling influence over the most significant environmental decisions. The states, which formally have authority over forests (in the concurrent list), local bodies, water, and public health, are constrained in the exercise of these powers by financial dependence on the Centre and by the Centre's ability to override state environmental decisions through centrally sponsored schemes, central agencies

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like the Forest Survey of India and the Central Pollution Control Board, and the overriding authority of Parliament on concurrent subjects.

1.2 The Judicial Construction of Environmental Rights

The constitutional text, thin as it is on environmental rights, has been supplemented over the past four decades by an extraordinary body of judicial interpretation through which the Supreme Court and High Courts have developed a comprehensive environmental jurisprudence by reading environmental rights and obligations into the constitutional provisions on fundamental rights, particularly Article 21 (the right to life) and Article 14 (the right to equality).

The judicial development of environmental rights in India began with the recognition in Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh (1985), the Dehradun Quarrying Case, that the Supreme Court had jurisdiction to intervene in matters of ecological damage that threatened the right to life under Article 21. The Court in that case ordered the closure of limestone quarrying operations in the Mussoorie hills that were causing ecological damage and threatening water sources, recognizing for the first time that environmental protection was a constitutional obligation enforceable through the Court's fundamental rights jurisdiction.

The landmark judgment in Subhash Kumar v. State of Bihar (1991) established explicitly that the right to life under Article 21 includes the right to the enjoyment of pollution-free water and air for the full enjoyment of life. This doctrinal move, reading environmental rights as implicit in the right to life, provided the constitutional foundation for the subsequent expansion of environmental jurisprudence.

M.C. Mehta v. Union of India, the longest-running environmental litigation in Indian legal history and arguably in world legal history, represents the fullest expression of the Supreme Court's environmental rights jurisprudence. Filed in 1985, the Mehta litigation has generated hundreds of orders across more than four decades, addressing topics as diverse as the pollution of the Ganga river, the pollution of the Delhi airshed, the regulation of industries in the Taj Trapezium zone around the Taj Mahal, vehicular emissions, industrial relocations, and the regulation of construction activity in environmentally sensitive areas. The Mehta litigation established the Supreme Court as a quasi-administrative environmental tribunal, issuing directions with the specificity and operational detail normally associated with executive agencies rather than constitutional courts.

The development of environmental principles in Indian jurisprudence has been remarkably sophisticated. In Vellore Citizens' Welfare Forum v. Union of India (1996), the Supreme Court adopted the precautionary principle (that in cases of scientific uncertainty about environmental harm, the burden of proof should lie on those who seek to exploit the environment to show that their activities will not cause harm) and the polluter pays principle (that those who cause pollution should bear the costs of remediation). In A.P. Pollution Control Board v. M.V. Nayudu (2001), the Court further elaborated these principles in the context of the regulatory framework for industrial pollution control.

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The public trust doctrine, holding that certain natural resources are held in trust by the state for the benefit of the public and cannot be alienated or degraded without the public's consent, was adopted by the Supreme Court in M.I. Builders Pvt. Ltd. v. Radhey Shyam Sahu (1999) and subsequently applied in a wide range of cases involving the use of common resources including urban open spaces, rivers, shorelines, and forests.

The most recent and most constitutionally significant development in Indian environmental jurisprudence is the Supreme Court's judgment of April 2024 in M.K. Ranjitsinh and Ors. v. Union of India and Ors., in which a Constitution Bench recognized for the first time that the right to be free from the adverse effects of climate change is a fundamental right protected under Articles 21 and 14 of the Constitution. The Court held that the right against the adverse effects of climate change and the right to a clean environment are two sides of the same coin. Verfassungsblog The then Chief Justice Chandrachud articulated the connection with philosophical clarity, observing that without a clean environment which is stable and unimpacted by the vagaries of climate change, the right to life is not fully realised.

This judicial recognition of a constitutional right against climate change places India, as the legal scholarship has noted, within a growing global movement of constitutional climate litigation. The case initially concerning the protection of the endangered Great Indian Bustard expanded in scope to address India's broader obligations under international environmental conventions and its constitutional duty to safeguard human life, health, and equality in the face of a rapidly changing climate. Health and Human Rights Journal

1.3 The Gap Between Jurisprudential Sophistication and Ecological Reality

The sophistication of India's environmental jurisprudence stands in stark and painful contrast to the state of the Indian environment. This contrast demands explanation, because the usual assumption in constitutional theory is that the judicial recognition of constitutional rights, particularly by an apex court with broad enforcement powers, should translate into improvements in the conditions that the rights are designed to protect.

The explanation has several dimensions, all of which illuminate the broader constitutional failures analyzed throughout this textbook.

The first dimension is the gap between declaratory judicial orders and administrative implementation. The Supreme Court in M.C. Mehta has issued hundreds of orders concerning the Ganga over more than four decades. The Ganga is, as of 2025, still severely polluted. The orders have been issued. The administrative machinery has nodded at them, produced compliance reports that are frequently misleading or optimistic, established committees and monitoring mechanisms that function inadequately, and continued in practice to prioritize industrial and agricultural uses of the river over its ecological health. The Supreme Court does not have the institutional capacity to supervise the granular administrative decisions that actually determine river quality: the enforcement of discharge standards against individual industrial units, the construction and maintenance of sewage treatment infrastructure, the regulation of agricultural runoff, and the management of urban waste.

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The second dimension is the structural conflict between environmental governance and India's development model. The constitutional framework for development, described extensively in earlier parts of this textbook, identifies economic development as the primary constitutional objective of the Indian state. The Directive Principles, the economic provisions of the Constitution, the framework for the planning system, and the political economy of electoral finance all systematically prioritize industrial growth, infrastructure development, and resource extraction over environmental protection. When the National Green Tribunal issues an order restricting mining in a particular area, the state response is typically not to enforce the order but to seek a modification, appeal to the Supreme Court, or simply ignore the order while the political mobilization around the affected economic interests generates pressure for reversal.

The third dimension is the institutional weakness of environmental regulation. The Central Pollution Control Board and the State Pollution Control Boards, which are the primary regulatory agencies for pollution control, are systematically understaffed, underfunded, and captured by the industries they are meant to regulate. The Environmental Impact Assessment process, which is supposed to ensure that development projects are evaluated for their environmental consequences before approval, has been systematically weakened by decades of amendments, exemptions, and procedural dilutions that have made it a rubber stamp for project approval rather than a genuine instrument of environmental scrutiny. The Supreme Court in 2025 emphasized the importance of prior environmental impact assessments and rejected post-facto approvals, asserting that environmental clearance must be obtained before project approval. Sleepy Classes The fact that this basic principle had to be restated in 2025 is itself an indictment of how comprehensively the EIA process has been subverted.

The fourth dimension is the political economy of environmental corruption, which is analyzed in detail in Chapter Six of this part. The allocation of environmental clearances for mining, forest land diversion, and industrial projects is one of the most corrupt processes in Indian governance. The systematic corruption of the environmental clearance process means that projects that should be refused on environmental grounds receive clearances in exchange for payments, political support, or both, and that the already inadequate environmental governance framework is further subverted by the pervasive incentives for dishonesty that corruption creates.

1.4 Theoretical Frameworks for Environmental Constitutionalism

The theoretical literature on environmental constitutionalism provides several frameworks that are useful for analyzing the Indian situation and for identifying the principles that should guide constitutional reform.

Klaus Bosselmann's theory of ecological constitutionalism, developed in his influential work "The Principle of Sustainability" and related scholarship, argues that environmental constitutionalism requires not merely the inclusion of environmental provisions in constitutional texts but the recognition of ecological integrity as a foundational constitutional principle that constrains all other constitutional provisions, including the right to property, the right to development, and the state's power to authorize extraction of natural resources. On Bosselmann's account, a genuine ecological constitution is one that recognizes the priority of ecological sustainability over short-term economic interests, that gives legal standing to future generations

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and to non-human nature, and that restructures economic and property rights around the constraint of ecological limits.

James May and Erin Daly, in their comprehensive comparative study "Global Environmental Constitutionalism," identify three models of environmental constitutional protection: provisions that impose environmental duties on the state, provisions that grant citizens environmental rights, and provisions that establish institutional mechanisms for environmental governance. The Indian Constitution contains elements of all three models: the Directive Principle imposing duties on the state, the judicially implied right to a clean environment, and the statutory institutions of the CPCB, the SPCBs, and the National Green Tribunal. But it lacks the coherent integration of these three elements that characterizes the most effective environmental constitutional frameworks.

Louis Kotzé's development of "global environmental constitutionalism" emphasizes the importance of earth system science in understanding constitutional obligations: the recognition that the stability of the earth's climate, biodiversity, freshwater systems, and biogeochemical cycles is the ultimate precondition for any constitutional order, and that constitutional frameworks must therefore be designed to protect the planetary boundaries that make human civilization possible. This perspective, which connects constitutional theory to the findings of earth system scientists including Johan Rockström and Will Steffen, is particularly relevant to the Indian situation given India's extraordinary ecological vulnerability to climate change and biodiversity loss.

The postcolonial environmental theory of scholars like Usha Natarajan and Karin Mickelson identifies the colonial origins of environmental degradation as a structural feature of the legal systems that govern natural resource use in the Global South. The colonial model of nature as raw material for imperial extraction, as opposed to the indigenous understandings of nature as commons, as ancestor, as sacred, and as community foundation, has been institutionalized in the legal frameworks that independent states inherited from their colonizers. India's forest law, water law, mining law, and land acquisition law all reflect this colonial model. The postcolonial critique of environmental constitutionalism argues that genuine environmental justice requires not merely the addition of environmental rights provisions to existing constitutional frameworks but the decolonization of the legal models through which natural resources are governed.

Ramachandra Guha and Juan Martinez-Alier's theory of "environmentalism of the poor" provides a crucial lens for understanding the class and caste dimensions of environmental governance in India. Their argument is that the environmental movement in India is not primarily driven by middle-class concerns about wilderness and aesthetics (the "environmentalism of the wealthy" that characterizes the dominant environmental discourse in the Global North) but by the survival concerns of the rural and tribal poor whose livelihoods depend directly on access to forest resources, clean water, clean air, and common lands. The marginalization of these communities through the privatization and enclosure of common resources is the primary driver of environmental degradation in India, because the communities who have the strongest interest in protecting these resources are systematically excluded from the governance decisions that determine their management.

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CHAPTER TWO: THE NATIONAL GREEN TRIBUNAL AND THE CRISIS OF ENVIRONMENTAL ADJUDICATION

2.1 The Establishment and Mandate of the National Green Tribunal

The National Green Tribunal Act of 2010 established the National Green Tribunal as a specialized judicial body for the adjudication of environmental disputes. The Tribunal has jurisdiction over matters relating to the enforcement of any legal right relating to the environment and to claims for compensation and damages arising from environmental harm. It was established in response to the recognized inadequacy of the ordinary courts to handle the volume, complexity, and technical specificity of environmental litigation, and with the stated objective of providing speedy and specialized environmental justice.

The Tribunal's establishment was widely welcomed by environmental lawyers, scholars, and activists as a significant institutional innovation. A specialized court with technical expertise in environmental matters, equipped with the powers of a civil court and with jurisdiction over a broad range of environmental laws, seemed to offer the prospect of more effective and accessible environmental adjudication than the overloaded and technically under-equipped ordinary courts could provide.

In the decade and a half since its establishment, the NGT has indeed produced a substantial body of environmental adjudication that has addressed an impressive range of environmental harms, from the pollution of specific rivers and lakes, to the regulation of specific industries, to the management of solid waste and e-waste, to the protection of coastal regulation zones, to the management of national parks and wildlife sanctuaries. The NGT's willingness to issue interim orders against polluting industries and its power to impose financial penalties that can be directed to remediation purposes have made it a more effective enforcement mechanism than the administrative agencies it supplements.

But the NGT has also demonstrated, with painful clarity, the limits of judicial environmental governance in a political system that does not prioritize environmental protection. Several structural problems have emerged.

2.2 The Institutional Vulnerabilities of the NGT

The first structural problem is the recurring judicial challenge to the NGT's constitutional validity and the challenge to tribunal independence that has characterized the relationship between the executive and the tribunal system more broadly.

The Supreme Court, in its 2025 judgment in Madras Bar Association v. Union of India, struck down provisions of the Tribunals Reforms Act, 2021 as unconstitutional, holding that the Act directly contradicted binding judicial pronouncements on the independence, appointment, and tenure of tribunal members. The Court stated that merely reproducing the very provisions which were earlier struck down amounts to a legislative override, which is an attempt to nullify binding

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judicial directions without addressing the underlying constitutional infirmities. SCC Times The executive's persistent attempts to subordinate the NGT and other tribunals to political control through the manipulation of appointments, tenures, and conditions of service reflects the broader pattern of institutional capture analyzed throughout this textbook.

The second structural problem is the enforceability of NGT orders against state governments and the executive. The NGT has issued hundreds of orders against state pollution control boards, municipal corporations, and state governments that have been ignored or implemented only partially. The contempt powers available to the Tribunal have been exercised, but the penalties imposed have been insufficient to alter the fundamental incentive structures of government agencies that have political reasons to prioritize industrial and developmental interests over environmental compliance. The NGT lacks the institutional authority and the political backing to compel compliance from state actors who are accountable to political principals with interests that conflict with environmental protection.

The third structural problem is the accessibility of NGT adjudication to the communities most affected by environmental harm. The NGT is based in New Delhi, with circuit benches in Bhopal, Pune, Kolkata, and Chennai. For a tribal community in Jharkhand whose forest has been diverted for a coal mine, for a fishing community in Odisha whose coast is being destroyed by an industrial port, for a farming community in Punjab whose groundwater has been contaminated by industrial effluent, access to the NGT requires resources of money, time, legal representation, and procedural knowledge that the most environmentally affected communities are least likely to possess. The environmental justice system in India suffers from the same class-based access problem that characterizes constitutional litigation more broadly: the communities who are most harmed are the communities who can least effectively use the institutional mechanisms designed to protect them.

The fourth structural problem is the relationship between the NGT and the environmental clearance system administered by the Ministry of Environment, Forests, and Climate Change. The NGT regularly reviews environmental clearances granted by the Ministry and has in many cases found them to be inadequately reasoned, based on inadequate environmental impact assessments, or in violation of the procedural requirements of the EIA notification. The Court scrutinized environmental clearances granted to various projects, emphasized the importance of prior environmental impact assessments, and rejected post-facto approvals. Sleepy Classes But the Ministry and the Expert Appraisal Committees that advise it continue to grant clearances that are subsequently challenged before the NGT, and the pace of clearances vastly exceeds the pace of NGT review. The result is that most environmental clearances of doubtful legal or factual basis are never challenged, because the legal costs of challenge exceed the capacity of those most affected.

2.3 The EIA Process: From Environmental Protection to Industrial Facilitation

The Environmental Impact Assessment process, established by the EIA Notification of 1994 and substantially revised by the EIA Notification of 2006, was designed to ensure that the environmental consequences of major development projects are systematically assessed, publicly disclosed, and considered in the decision-making process before projects receive government

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approval. In principle, the EIA process is one of the most important mechanisms of preventive environmental governance: if it works properly, it identifies environmental harms before they occur and creates the opportunity to avoid or mitigate them.

In practice, the EIA process in India has become, as a substantial body of academic research and activist documentation has established, primarily a legitimation mechanism for project approvals rather than a genuine instrument of environmental scrutiny. The problems with the EIA process are multiple and systematic.

First, the quality of Environmental Impact Assessments produced for projects is frequently poor. Many EIAs are prepared by consulting firms that are paid by the project proponents whose projects they are assessing, creating an obvious structural conflict of interest. The EIAs produced by these consultancies frequently understate environmental impacts, misrepresent baseline environmental conditions, make optimistic assumptions about the effectiveness of proposed mitigation measures, and fail to assess alternative project designs or locations that might achieve the project's objectives with lower environmental impact.

Second, the public consultation process required by the EIA Notification has been systematically manipulated and circumvented. The requirement that public hearings be held in the areas affected by proposed projects has, in numerous documented cases, been satisfied through meetings that are held with inadequate notice, in inconvenient locations, without effective translation into local languages, and with the presence of project proponents' representatives who manage the proceedings to minimize effective community input. The documentation of public hearing proceedings frequently misrepresents the nature and extent of community opposition.

Third, the Expert Appraisal Committees that review EIA reports and make recommendations to the Ministry of Environment on grant or refusal of environmental clearance have been criticized by NGT orders, academic researchers, and civil society organizations for being captured by development interests. Members of these committees have in several documented cases had direct business relationships with project proponents or with their consultants. The grant rates of these committees are extraordinarily high, suggesting that the EAC system functions primarily as a formality in the project approval process rather than as a genuine substantive review.

Fourth, the EIA Notification has been subjected to a series of amendments and clarifications since 2006 that have progressively narrowed the scope of projects requiring EIA, expanded the categories of projects that can receive fast-track approvals, and reduced the robustness of the public participation requirements. The proposed EIA Notification of 2020, which generated an extraordinary volume of public opposition and was subsequently modified but not withdrawn in its most objectionable aspects, was criticized as a fundamental attack on the existing, already inadequate, EIA framework.

2.4 Forest Clearances and the Destruction of Biodiversity

The Forest Conservation Act of 1980 requires that any diversion of forest land to non-forest purposes receive prior approval from the Central Government. This requirement was enacted in response to the rapid pace of forest diversion for agricultural and industrial purposes in the

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1970s, which was depleting India's forest cover at an alarming rate. The Forest Conservation Act has been credited with significantly slowing the rate of forest diversion, and the forest cover figures published by the Forest Survey of India show a statistical improvement in total forest cover since the Act's enactment.

But the forest conservation framework has several serious problems that the constitutional analysis must confront.

The first problem is the quality of what counts as "forest cover" in the official statistics. The Forest Survey of India uses a definition of forest cover that includes any land with at least ten percent tree canopy, regardless of the ecological quality or biodiversity value of the vegetation. Commercial monoculture plantations of eucalyptus, rubber, and other species grown for timber or pulpwood are counted as forest cover, as is the degraded scrub vegetation that grows back on lands that have been stripped of their natural forest. The official forest cover statistics therefore significantly overstate the ecological health of India's forest estate.

The second problem is the ongoing diversion of forest land for mining, infrastructure, industry, and other purposes, at a rate that, while lower than in the pre-1980 period, continues to reduce the area of genuinely ecologically valuable natural forest. Between 1980 and 2021, approximately 1.56 million hectares of forest land were diverted for various purposes under the Forest Conservation Act. The lion's share of these diversions have been for mining projects, road and railway construction, and hydropower projects, in the regions where tribal communities have historically depended on forest resources for their livelihoods.

The third problem is the relationship between forest governance and tribal rights, which is addressed in detail in Chapter Four of this part. The constitutional framework of forest governance, even after the enactment of the Forest Rights Act of 2006, systematically disadvantages tribal communities by treating the state as the primary rights holder in forest areas and tribal communities as subordinate claimants whose forest rights can be overridden for development purposes.

CHAPTER THREE: CLIMATE JUSTICE AND THE CONSTITUTIONAL FRAMEWORK OF INTERGENERATIONAL INJUSTICE

3.1 India's Climate Vulnerability: The Constitutional Stakes

The climate crisis is not, for India, a distant future problem. It is a present and intensifying reality whose consequences are already being experienced by hundreds of millions of Indian citizens, and whose future trajectory threatens to undermine the social, economic, and physical foundations of Indian civilization in ways that dwarf the constitutional problems analyzed elsewhere in this textbook.

India's climate vulnerability is extraordinary and multi-dimensional. The country is experiencing increasing frequency and severity of extreme heat events: the heat waves of 2022, 2023, 2024,

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and early 2026 have killed hundreds of people and imposed enormous productivity losses on the agricultural and informal labor workforce, which consists predominantly of people who work outdoors in conditions of physical labor and who lack the resources to protect themselves from extreme heat. The constitutional right to life under Article 21 is directly implicated in every heat death, because every such death is a consequence of the failure of the state to take adequate action on the climate crisis that science has identified as the cause.

The retreat of Himalayan glaciers, which provide the source waters for India's major river systems, threatens the long-term water security of hundreds of millions of people in the Gangetic plain and the Indo-Gangetic basin. The Intergovernmental Panel on Climate Change has documented the accelerating retreat of glaciers in the Hindu Kush Himalayan region and projects significant reductions in glacier mass through the twenty-first century that will reduce summer river flows with severe consequences for irrigation, drinking water supply, and hydropower generation. The constitutional right to water, recognized as an aspect of the right to life under Article 21, is directly threatened by glacier retreat at a rate that the state's current climate policies are inadequate to prevent.

Sea level rise and the intensification of tropical cyclones threaten India's extensive coastline and the tens of millions of people who live in coastal areas, including Mumbai, Chennai, Kolkata, and hundreds of smaller coastal cities and fishing communities. The coastal zone management framework, which is supposed to regulate development in vulnerable coastal areas, has been systematically weakened by political pressure from real estate developers and industrial interests.

Increased monsoon variability, manifesting as more intense but shorter periods of rainfall interspersed with longer dry periods, threatens agricultural productivity and increases the risk of both floods and droughts within single seasons. The agricultural crisis documented in earlier parts of this textbook, including the farmer distress and the epidemic of farm suicides that have characterized Indian rural society for decades, is significantly driven by climate change-induced rainfall variability.

The constitutional implication of these climate impacts is profound. A state that is constitutionally committed to the right to life, to the right to livelihood, to the protection of the health and safety of its citizens, and to the principle of sustainable development is constitutionally obligated to take adequate action to prevent and mitigate the climate change that threatens these constitutional commitments. The constitutional right to be free from the adverse effects of climate change, recognized in M.K. Ranjitsinh, imposes an affirmative obligation on the state that has not been adequately translated into policy.

3.2 India's Climate Policy and Its Constitutional Contradictions

India's climate policy presents a profound constitutional contradiction. On the one hand, India has made international commitments under the Paris Agreement to reduce the carbon intensity of its economy, to achieve specified targets for renewable energy capacity, and to pursue a pathway to net zero emissions by 2070. On the other hand, India has simultaneously expanded its coal mining capacity, approved new thermal power plants, and maintained a domestic coal industry

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that is heavily subsidized and politically protected by the coal belt states of Jharkhand, Chhattisgarh, Odisha, and Madhya Pradesh.

This contradiction is not a policy inconsistency that can be resolved through better coordination. It is a structural feature of the constitutional political economy: the coal industry employs millions of people directly and indirectly in the states where the coal deposits are located, and the political economy of coal-belt state governance is organized around the maintenance of coal employment and coal revenue. The Union government's climate commitments, while real in their international dimension, are constrained by the domestic political costs of accelerating the coal transition in ways that would disrupt these political economies.

The constitutional framework has no mechanism for resolving this contradiction. There is no constitutional provision that makes climate commitments binding on the domestic policy process in the same way that international treaty obligations are binding in international law. There is no constitutional institution with the authority to hold the state accountable to its climate targets. The National Green Tribunal can adjudicate individual environmental harms, but it cannot evaluate the adequacy of India's overall climate policy against constitutional standards.

The emerging jurisprudence on constitutional climate obligations offers some potential remedies. The recognition in M.K. Ranjitsinh that the right to be free from climate change's adverse effects is a fundamental right opens the possibility that citizens could bring constitutional challenges to specific state actions, such as the grant of new coal mine licenses or the approval of new thermal power plants, as violations of this constitutional right. The Court recognized the right against the adverse effects of climate change as inherent to the right to life and personal liberty enshrined in Article 21 of the Constitution, reasoning that a clean and stable environment unaffected by climate change is necessary for the full realisation of the right to life. Oxford Human Rights Hub

But translating this recognition into effective constitutional constraints on coal policy requires judicial institutions that are willing to engage in structural environmental adjudication of the kind that the German Federal Constitutional Court undertook in its landmark 2021 climate judgment (Neubauer et al. v. Germany), where the Court held that the German Climate Change Act was constitutionally inadequate because it failed to specify how emissions reductions would be distributed over time and thereby impermissibly displaced the burden of emissions reduction onto future generations. The German Constitutional Court's reasoning, drawing on the principle of intergenerational equity, provides a model that the Indian Supreme Court's environmental jurisprudence could readily adopt, given that the principle of intergenerational equity has already been recognized in Indian case law, including in the Vellore Citizens' Welfare Forum judgment.

3.3 Intergenerational Justice and the Constitutional Framework

The principle of intergenerational equity, holding that the present generation has a constitutional obligation not to exhaust or degrade natural resources in ways that deprive future generations of the same resources, is one of the most intellectually compelling principles in environmental constitutional law. It connects environmental governance to the most fundamental questions of constitutional legitimacy: a constitution that was given to the people of India by a Constituent Assembly in 1950 cannot, if it genuinely expresses the sovereignty of the Indian people, be

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interpreted as authorizing the present generation to consume the natural capital that future generations will need.

The constitutional dimensions of intergenerational equity go beyond the question of climate change. India's groundwater depletion, which the NITI Aayog has described as one of the most serious water security challenges in the world, is an intergenerational problem: the overextraction of groundwater for irrigation, industry, and urban water supply is depleting aquifers at rates that exceed natural recharge, creating a future water crisis for generations that have not yet been born. The constitutional right to water, recognized as an aspect of Article 21, must include the right of future generations to water, and the constitutional framework for water governance must therefore include obligations to protect groundwater from overextraction.

Similarly, the loss of soil fertility through unsustainable agricultural practices, the depletion of fish stocks through overfishing and coastal ecosystem destruction, the loss of biodiversity through habitat destruction, and the contamination of land and water resources through improper industrial and municipal waste disposal all represent transfers of costs from the present generation to future generations that a constitutional framework committed to intergenerational equity must address.

The theoretical framework for intergenerational constitutionalism has been developed by scholars including Edith Brown Weiss (in "In Fairness to Future Generations," 1989), who argues for constitutional duties of intergenerational equity that require the state to pass on to future generations a natural and cultural resource base no worse than the one it received; Alexandre Kiss, who has elaborated on the concept of the "common heritage of mankind" as a constitutional principle applicable to environmental governance; and more recently by Jonathan Boston and others working on the constitutional and institutional mechanisms for intergenerational justice.

The Indian constitutional framework contains the seeds of intergenerational constitutionalism in the public trust doctrine and in the concept of sustainable development, but these principles have not been translated into robust constitutional obligations with effective enforcement mechanisms. A reformed environmental constitution should explicitly articulate intergenerational obligations, should establish institutional mechanisms for long-term environmental planning and budgeting that account for the needs of future generations, and should give constitutional standing to future generations or their representatives in environmental adjudication.

3.4 Climate Migrants, Climate Displacement, and the Constitutional Void

One of the most serious constitutional gaps in India's environmental framework is the complete absence of legal protection for people who are displaced by environmental and climate change. India is, as multiple international assessments have identified, one of the countries most severely exposed to internal displacement driven by environmental factors: cyclones and flooding in coastal and riverine areas, drought in rain-shadow and dryland agricultural regions, desertification in the northwestern and central plateau regions, flooding from glacier lake outburst floods in the Himalayan foothills, and sea level rise in low-lying coastal areas.

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The Internal Displacement Monitoring Centre has estimated that India consistently records some of the highest numbers of new displacements by natural disasters globally, with millions of people displaced annually by flood events alone. As climate change intensifies the frequency and severity of these events, the scale of displacement will increase.

And yet the Indian constitutional framework has no specific provisions for the rights of internally displaced persons, no national policy on internal displacement, and no legal framework that recognizes the specific vulnerabilities of climate-displaced communities or that imposes obligations on the state to prevent displacement, provide protection and assistance during displacement, and facilitate durable solutions including voluntary return, local integration, or resettlement.

The constitutional right to life under Article 21 and the constitutional provisions on the right to livelihood have been invoked in some High Court and Supreme Court decisions in the context of specific displacement events, but without a systematic constitutional or legislative framework, these decisions provide only ad hoc remedies rather than structural protection. The gap in the constitutional framework for climate displacement is a gap that will become increasingly consequential as climate change intensifies over the coming decades.

CHAPTER FOUR: FORESTS, TRIBAL RIGHTS, AND THE CONSTITUTIONAL ECONOMY OF ECOLOGICAL DESTRUCTION

4.1 The Forest Rights Act and Its Constitutional Significance

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, commonly known as the Forest Rights Act (FRA), represents one of the most significant legislative attempts to address the postcolonial constitutional injustice done to tribal communities in India through the denial of their rights to forest land and resources. The FRA recognizes individual forest rights, community forest rights, and the right to protect, regenerate, conserve, and manage community forest resources for tribal and other traditional forest dwellers.

The constitutional significance of the FRA lies in its recognition that the state's claim to be the sole manager and protector of forest resources, which has been the basis of Indian forest law since the colonial Forest Act of 1878, was never constitutionally legitimate in relation to the communities whose livelihoods, cultures, and social organization were inseparable from forest resources. The FRA's statement that colonial and postcolonial forest governance has resulted in the historical injustice of the denial of forest rights to forest-dwelling communities represents a constitutional acknowledgment of the gap between the constitutional commitments of the Indian republic and the actual treatment of its tribal citizens.

But the FRA's implementation has been, as a comprehensive body of research by organizations including the Campaign for Survival and Dignity, the Rights and Resources Initiative, and the National Coalition for Forest People's Rights has documented, deeply inadequate and in many respects counterproductive. The rejection rate for individual forest rights claims is

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extraordinarily high in many states: between 40 and 60 percent of all filed claims have been rejected in several states, with rejections made on grounds that legal scholars and the Forest Rights Act Committee have consistently identified as being improper, arbitrary, and often based on the testimony of forest department officials who have a vested institutional interest in preventing the recognition of rights that would reduce their own regulatory authority.

The gram sabha, the village assembly, is constituted under the FRA as the primary authority for recognizing and verifying forest rights claims. The institutional reality of the gram sabha process in forest areas, however, is very different from the constitutional ideal. In many areas, gram sabhas are either not constituted, not genuinely representative (particularly of women and marginalized sub-communities within tribal groups), or subject to capture by forest department officials who control the proceedings and influence outcomes. The constitutional promise of community self-governance over forest resources has been partially realized in some areas, particularly where active civil society organizations have supported community organizing and gram sabha processes, but has been largely unrealized in the majority of forest areas.

4.2 The Supreme Court Order of 2019 and the Mass Eviction Crisis

The most dramatic illustration of the constitutional vulnerability of tribal forest rights was the Supreme Court's order of February 2019 in Wildlife First and Ors. v. Ministry of Forest and Environment and Ors., in which the Court directed all state governments to evict all forest dwellers whose forest rights claims under the FRA had been rejected by February 13, 2019. The order, if implemented, would have required the eviction of an estimated 1.89 million families, approximately 8 to 10 million people, from forests across India.

The order was subsequently modified after the Union Government and twenty-one state governments filed affidavits acknowledging that the rejection of claims had in many cases not followed the proper procedural requirements of the FRA and that the record of rejections could not be relied upon as an accurate identification of those who genuinely lacked forest rights. But the episode illuminated, with brutal clarity, the constitutional vulnerability of tribal communities whose forest rights exist in law but whose practical security depends on the willingness of the state and the judiciary to enforce them.

The tribal rights eviction order demonstrated several structural features of the Indian constitutional order that are analyzed throughout this textbook. First, it demonstrated the class character of judicial environmental protection: the petitioners in the case were organizations representing the interests of wildlife conservation, many of them supported by the affluent environmental constituency that has influence in the courts, while the respondents whose rights were at stake were tribal communities among the poorest and most politically marginalized in India. Second, it demonstrated the inadequacy of constitutional representation for tribal communities in the highest courts: the communities whose rights were most directly at stake had no effective voice in the proceedings that determined their fate until the crisis became so acute that civil society organizations intervened to bring their perspectives before the Court. Third, it demonstrated the contradiction between two constitutional commitments, the protection of forest ecosystems and the protection of the rights of forest-dependent communities, that has not been adequately resolved by either the constitutional text or its interpretation.

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4.3 Fifth Schedule, PESA, and the Constitutional Governance of Tribal Areas

The constitutional framework for the governance of tribal areas includes, in addition to the FRA, two major constitutional instruments: the Fifth Schedule (applicable to scheduled areas in most tribal states) and the Sixth Schedule (applicable to specified tribal areas in the northeastern states). The Fifth Schedule provides for the establishment of Tribal Advisory Councils in scheduled area states and gives the Governor of each such state the power to apply or exclude laws from scheduled areas. The Sixth Schedule provides for the establishment of Autonomous District Councils with substantial legislative and judicial powers in specified tribal areas of Assam, Meghalaya, Tripura, and Mizoram.

The Panchayats (Extension to Scheduled Areas) Act of 1996, popularly known as PESA, extended the provisions of the 73rd Constitutional Amendment on panchayati raj to scheduled areas with important modifications: gram sabhas in PESA areas were given significant rights over the management of natural resources, the power to prevent the alienation of tribal land, and the right to be consulted before any development project affecting tribal land and resources is approved.

The constitutional significance of PESA is that it represents the most explicit constitutional recognition of the principle of free, prior, and informed consent (FPIC) for tribal communities, which is the central requirement of the United Nations Declaration on the Rights of Indigenous Peoples and of international indigenous rights law generally. The right to be consulted before development projects affecting tribal land is, in legal terms, a requirement for meaningful participatory process rather than a veto power. But even this attenuated version of FPIC has been systematically violated by state and central governments in the approval of mining projects, dam construction, and forest land diversion in tribal areas.

The Supreme Court's judgment in Samata v. State of Andhra Pradesh (1997), one of the most significant environmental and tribal rights judgments in Indian history, held that non-tribals cannot be granted mining leases in scheduled areas and that mining in tribal areas must be done only through government agencies or cooperative societies of tribals. This judgment, which should have been transformative for the governance of tribal mineral resources, was systematically circumvented by state governments that found technical ways to continue issuing mining leases to non-tribal companies in scheduled areas.

The constitutional framework for tribal environmental governance is thus characterized by a pattern that is by now familiar from the analysis throughout this textbook: significant constitutional and statutory rights that are systematically denied in practice, with the denial enabled by institutional capture, by the weakness of accountability mechanisms, and by the political power of the industrial and extractive interests that benefit from the denial.

4.4 The Adani Mining Controversy and Constitutional Environmental Failure

The controversies surrounding the grant of mining and industrial clearances to the Adani Group in various tribal and ecologically sensitive areas provide a case study that illustrates the

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intersection of political power, constitutional environmental governance failure, and tribal rights denial in contemporary India.

The Hasdeo Arand coalfield in Chhattisgarh, described by environmental scientists as one of the most important contiguous stretches of dense forest in central India and home to significant populations of elephants, tigers, and other wildlife as well as large tribal communities, has been the site of one of the most sustained and intensely contested environmental conflicts in recent Indian history. Mining leases in the Hasdeo Arand area were challenged on the grounds that they violated the FRA (because gram sabha consent had not been properly obtained), violated the forest conservation framework (because the environmental clearances were inadequately assessed), and violated the principles of the precautionary approach to ecologically sensitive areas.

The tribal communities of Hasdeo Arand engaged in prolonged protest, filing legal challenges, engaging with parliamentary representatives, and staging sustained demonstrations that attracted national and international attention. The Supreme Court in several orders acknowledged the seriousness of the concerns about gram sabha consent and environmental assessment. The political response from both the Chhattisgarh state government (which changed hands between the Congress and the BJP during the controversy) and the central government was to find ways to maintain the mining approvals while appearing to address procedural concerns.

The Hasdeo Arand case is not exceptional. It is representative of a pattern that is replicated across dozens of ecologically sensitive tribal areas, from Niyamgiri in Odisha to the forests of Jharkhand to the tribal areas of Himachal Pradesh: the systematic approval of mining and industrial projects in areas of high ecological and cultural sensitivity, through processes of environmental clearance that are inadequate, consultation processes that are procedurally compliant but substantively manipulated, and governance frameworks that ultimately subordinate tribal rights and ecological protection to the interests of extractive industry.

CHAPTER FIVE: WATER, RIVERS, AND THE CONSTITUTIONAL GOVERNANCE OF THE COMMONS

5.1 Water as Constitutional Right and Constitutional Battleground

Water is the most fundamental of natural resources, the precondition for all human life, the basis of agricultural production, the source of industrial processes, and the medium of ecological connectivity. The constitutional governance of water in India is, correspondingly, one of the most complex and most consequential dimensions of the constitutional order.

The constitutional right to water has been recognized by the Supreme Court as a component of the right to life under Article 21. In Subhash Kumar v. State of Bihar (1991), as noted earlier, the Court held that the right to life includes the right to the enjoyment of pollution-free water. In Vellore Citizens' Welfare Forum (1996), the Court held that the state has a constitutional obligation to protect water resources from industrial pollution. In A.P. Pollution Control Board v.

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M.V. Nayudu (2001), the Court emphasized that access to clean drinking water is a fundamental right. In more recent years, the Court has extended this right to recognize the obligation of the state to provide adequate sanitation infrastructure as a component of the right to water.

But the constitutional right to water, like other constitutional rights analyzed throughout this textbook, is a formal entitlement that has not been translated into universal substantive access. The Niti Aayog's 2018 Composite Water Management Index documented that 600 million Indians, nearly half the population, face high to extreme water stress, and that 21 major cities are expected to run out of groundwater by 2020 (a projection that was partially realized in cities including Chennai, which experienced severe water crisis in 2019). Approximately 200,000 people die annually in India from diseases caused by contaminated water. The rural water supply program has been significantly expanded under Jal Jeevan Mission (launched in 2019 with a stated goal of providing piped water connections to all rural households by 2024), but the quality and reliability of these connections in practice varies enormously.

The constitutional framework for water governance is complicated by the federal distribution of powers, which gives states jurisdiction over water supply and irrigation while reserving to the Union the regulation of inter-state rivers and river valleys. The result is that the most significant water governance decisions, which involve the allocation of river flows among different states and the regulation of groundwater extraction, are governed either by inter-state water disputes processes that are notoriously slow and contentious or by the absence of any effective regulatory framework.

5.2 Inter-State Water Disputes: The Constitutional Architecture of Perpetual Conflict

The constitutional mechanism for resolving inter-state water disputes is established by Article 262, which gives Parliament the power to provide by law for the adjudication of disputes relating to the use, distribution, or control of the waters of any inter-State river or river valley. Parliament has exercised this power through the Inter-State Water Disputes Act of 1956, which provides for the establishment of water disputes tribunals on the application of any state government in relation to a dispute with one or more other state governments.

The tribunals established under the Inter-State Water Disputes Act have a track record of extraordinary slowness and chronic non-implementation. The Cauvery Water Disputes Tribunal, which adjudicated the dispute between Karnataka and Tamil Nadu over the allocation of Cauvery river waters, took 28 years from its constitution in 1990 to deliver a final award, and the implementation of that award has been contested through the Supreme Court in dozens of applications. The Ravi and Beas Water Tribunal, addressing the dispute between Punjab, Haryana, and Rajasthan over the waters of these rivers, was constituted in 1987 and had not delivered a final award as of early 2026, nearly four decades later.

The slowness of the tribunals is not merely an administrative failure. It reflects a deeper structural problem: inter-state water disputes involve the intersection of constitutional law, hydrology, agricultural economics, and deeply charged regional politics in ways that make both legal adjudication and political negotiation extraordinarily difficult. The states involved in these disputes have legitimate and conflicting interests in limited water resources, and neither the legal

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framework nor the political system provides adequate mechanisms for balancing these interests in ways that all parties can accept.

The failure to resolve inter-state water disputes in a timely and definitive way has serious consequences for agricultural investment, for the planning of irrigation infrastructure, and for the political relationship between the affected states. The periodic eruption of Cauvery dispute tensions into protests, bandhs, and inter-communal violence in Karnataka and Tamil Nadu is a symptom of the constitutional failure to provide effective and timely resolution of resource conflicts, and it is a form of state failure that has costs in lives, economic activity, and the rule of law.

5.3 Groundwater Governance and the Constitutional Vacuum

The most serious water governance failure in India, from the perspective of long-term sustainability, is the near-complete constitutional and legal vacuum in the governance of groundwater. Groundwater extraction in India is governed primarily by the common law doctrine that the owner of the surface of land has the right to extract groundwater beneath it, a doctrine inherited from the colonial property law that treats groundwater as a private resource appurtenant to land ownership.

The consequences of this legal framework, combined with the subsidized provision of electricity to farmers for pumping, have been catastrophic. India is the world's largest extractor of groundwater, accounting for approximately 25 percent of global groundwater extraction despite having only 17 percent of the world's population. The rate of extraction in most of India's agricultural regions substantially exceeds the rate of natural recharge. The water table is falling in most of the country's major agricultural regions, with severe consequences for both agricultural productivity and the drinking water security of rural populations whose only water source is groundwater.

The constitutional right to water, if it is to be substantive rather than merely formal, requires a constitutional framework for groundwater governance that moves beyond the colonial common law regime of private property rights in subsurface water. Several models are available from comparative law: the doctrine of public ownership of groundwater (adopted in most Western water law systems), the framework of community governance of groundwater in areas where it is a shared commons, and the regulatory framework that allocates groundwater rights through administrative processes that account for the sustainability of the aquifer and the rights of all dependent users.

The constitutional framework needs to recognize groundwater as a public resource held in trust by the state for all citizens, including future generations, and to establish regulatory mechanisms that manage extraction in accordance with the principles of intergenerational equity and sustainable use. This would require both constitutional reform (to clarify the legal status of groundwater as a public resource rather than a private property right) and legislative reform (to create the administrative machinery for groundwater management).

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5.4 River Rejuvenation and the Gap Between Constitutional Promise and Administrative Reality

The Namami Gange program, launched in 2014 with an initial outlay of approximately 20,000 crore rupees and subsequently expanded, represents the most ambitious attempt in Indian history to address the pollution and ecological degradation of the Ganga river. The program encompasses the construction and upgrading of sewage treatment plants, the installation of industrial effluent treatment infrastructure, the management of solid waste in the river corridor, the conservation of river biodiversity, and the development of ghats and crematoria to reduce the ritual use of the river in ways that contribute to pollution.

The constitutional importance of the Ganga program lies in its scale and its political visibility: the Ganga is not merely ecologically important but culturally and spiritually central to Hindu civilization, and its restoration is a constitutional and cultural priority of the highest order. The Supreme Court, in the M.C. Mehta litigation, has maintained continuous judicial supervision of Ganga pollution for four decades.

And yet as of 2025, despite the billions spent and the political commitment invested in the Namami Gange program, the Ganga remains severely polluted along most of its length. The biological oxygen demand levels in most stretches exceed the standards set by the Central Pollution Control Board for bathing water quality. The construction and upgrading of sewage treatment plants has proceeded much more slowly than the targets set by the program. The enforcement of industrial effluent discharge standards in the industries along the Ganga corridor remains inadequate.

The gap between investment and outcome in the Ganga program is a microcosm of the broader constitutional governance failure in environmental matters. The money is spent. The institutions are created. The orders are issued. The targets are set. And the river remains polluted because the structural conditions that cause the pollution, the inadequacy of urban sanitation infrastructure relative to the scale of urban population, the industrial effluent discharge from hundreds of tanneries, textile factories, and chemical industries along the river, the agricultural runoff containing fertilizers and pesticides, and the institutional inability to consistently enforce environmental standards against politically connected industrial interests, have not been adequately addressed.

CHAPTER SIX: THE POLITICAL ECONOMY OF ENVIRONMENTAL CORRUPTION

6.1 Environmental Clearances as Currency: The Corruption of Environmental Governance

The corruption of India's environmental governance system is not a peripheral or accidental feature. It is structural. It is systematic. And it is directly connected to the constitutional failures of accountability, institutional independence, and democratic oversight analyzed throughout this textbook.

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The grant of environmental clearances, forest clearances, and coastal regulation zone exemptions is one of the most valuable exercises of governmental discretion in Indian administration, because these clearances are the gatekeepers for investments that amount to hundreds of billions of rupees in mining, industry, infrastructure, and real estate. The discretion involved in granting or refusing these clearances, combined with the enormous financial stakes, creates an environment in which the incentives for corruption are extremely powerful.

The forms that environmental clearance corruption takes are multiple. At the most straightforward level, payments are made to officials at multiple levels of the clearance process, including to members of the State Level Expert Appraisal Committees, to officials in the Ministry of Environment and the State Environment Impact Assessment Authorities, and to political officials whose support is needed for expedited clearances. At a more sophisticated level, the revolving door between the environmental regulatory agencies and the consultancy and industry sectors that they regulate creates structural conflicts of interest: officials who will seek employment in the industries they currently regulate have powerful incentives to grant clearances in ways that are favorable to those industries.

The political finance dimension of environmental corruption is particularly important. The industries most dependent on environmental clearances, including mining, construction, and manufacturing, are among the largest contributors to political party finance in India. The business model of several large industrial groups is directly dependent on the continued grant of favorable environmental clearances, and these groups' political finance contributions are a direct function of this dependence. The constitutional failure of party finance regulation, documented in the analysis of the electoral bonds scandal and its wider context in earlier parts of this textbook, thus directly enables the corruption of environmental governance.

The 2G spectrum scandal, the coal block allocation scandal, and the iron ore mining scandals in Goa, Odisha, and Karnataka that were documented by the Central Empowered Committee and the Justice Shah Commission in successive reports, all involve the intersection of environmental clearances with political corruption. The Shah Commission report on Goa mining found systematic violations of environmental laws, Forest Conservation Act provisions, and the rights of local communities, orchestrated through a nexus of mining companies, state government officials, and political figures of both major parties.

6.2 The Coal India Model: Public Sector Extraction and Constitutional Environmental Failure

Coal India Limited, the state-owned enterprise that accounts for the majority of India's coal production, represents an interesting case study in the constitutional economics of environmental governance. Coal India is the world's largest coal mining company, and its operations across the coalfields of Jharkhand, Chhattisgarh, Odisha, Madhya Pradesh, and West Bengal are responsible for a significant proportion of India's greenhouse gas emissions, for the displacement of tribal communities from their land and forest resources, and for the air and water pollution associated with open-cast coal mining.

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The constitutional paradox of Coal India is that it is a public sector enterprise, owned by the Government of India, whose operations systematically violate the constitutional rights of some of India's most vulnerable citizens. The tribal communities displaced by Coal India's expansion projects, the fishing and farming communities whose water sources are contaminated by coal mine drainage, the communities exposed to the air pollution of coal loading and transportation, these are not the victims of private corporate greed that can be regulated by the state. They are the victims of the state itself, acting through its commercial enterprise.

This constitutional paradox is not unique to Coal India. The public sector enterprises of the Indian state, in mining, energy, infrastructure, and defense, have collectively been responsible for massive environmental degradation and forced displacement that the constitutional framework has been unable to address because the same state that is constitutionally obligated to protect citizens' rights is also the enterprise undertaking the activities that violate them.

The constitutional resolution of this paradox requires a fundamental rethinking of the relationship between state-owned enterprises and constitutional obligations. Public sector enterprises should not be exempt from the constitutional rights of those they affect. The state cannot hide behind the legal separation between its regulatory and commercial functions to avoid accountability for environmental harms caused by its own enterprises. The constitutional right to life, the right to livelihood, and the right to a clean environment apply equally to victims of public sector activities as to victims of private sector activities.

6.3 Mining, Land Acquisition, and the Constitutional Framework of Displacement

The intersection of environmental governance and land acquisition is one of the most acute constitutional problems in India. The Land Acquisition, Rehabilitation and Resettlement Act of 2013, which replaced the colonial Land Acquisition Act of 1894, significantly improved the constitutional framework for the acquisition of private land for public purposes by requiring meaningful consultation with affected communities, providing for more generous compensation, and establishing obligations for rehabilitation and resettlement of displaced persons.

But the implementation of the 2013 Act has been systematically subverted by the state governments that must implement it. Multiple state governments have enacted amendments to the Act that have weakened its consent requirements, reduced its compensation provisions, and narrowed its scope of application. The central government's own 2015 Land Acquisition Ordinance, which was ultimately not enacted into law after widespread opposition, attempted to reduce the social impact assessment and consent requirements that are the most democratically significant innovations of the 2013 Act.

The relationship between land acquisition and environmental governance is direct and devastating in practice. The development projects that require the largest land acquisitions, including mining projects, thermal power plants, large dams, industrial corridors, and linear infrastructure like highways and railways, are also those with the most significant environmental impacts. The people whose land is acquired are typically the same people who are most affected by the environmental consequences of the projects for which their land is taken. The same tribal families who lose their agricultural land to a coal mine also lose their access to forest resources

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that have been diverted for the mine, their access to clean water from streams that are contaminated by mine drainage, and their access to clean air that is degraded by coal dust and mine emissions.

The constitutional framework should address this intersection by treating land acquisition and environmental impact assessment as integrated processes rather than parallel ones, by requiring that environmental harms to displaced communities be compensated as part of the land acquisition process rather than addressed (if at all) through separate environmental governance mechanisms, and by giving displaced communities constitutional rights to participate in the governance of projects whose impacts they continue to bear.

CHAPTER SEVEN: URBAN ECOLOGY AND THE CONSTITUTIONAL FAILURE OF CITIES

7.1 The Constitutional Governance of Urban Environments

India's rapid urbanization is one of the defining demographic processes of the twenty-first century. India is projected to have more than 800 million urban residents by 2050, representing an extraordinary expansion of urban infrastructure demands in the areas of housing, water supply, sanitation, solid waste management, transportation, and public open space. The constitutional framework for urban governance, established primarily by the 74th Constitutional Amendment of 1992, which constitutionalized urban local bodies as institutions of self-government, has been inadequate to manage this transition.

The ecological consequences of unregulated and inadequately governed urban expansion in India are visible in every major city. The air quality crisis is the most widely documented: fourteen of the world's twenty most polluted cities are in India, and the principal sources of urban air pollution, vehicular emissions, construction dust, industrial emissions, and the burning of biomass and municipal waste, are all products of governance failures that the constitutional framework has been unable to address.

Delhi's air quality crisis, which has been the subject of Supreme Court litigation since the M.C. Mehta case of the late 1980s, illustrates the limits of judicial environmental governance in the urban context. The Supreme Court has issued hundreds of orders on Delhi's air quality, including orders for the conversion of public transport to compressed natural gas, the shifting of polluting industries from residential areas, the regulation of brick kilns, and the management of stubble burning in the surrounding agricultural states. Some of these orders have had measurable positive effects. But Delhi's air quality remains severely harmful to human health for a significant part of the year, reflecting the limits of judicial management of a problem that ultimately requires fundamental changes in urban governance, land use planning, industrial location, agricultural practice, and vehicular technology.

The solid waste management crisis in Indian cities is a constitutional crisis of the right to sanitation and the right to a clean environment. India generates approximately 150,000 tonnes of

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municipal solid waste daily, of which a significant proportion is not collected, is dumped in unregulated landfills or open dumps, or is burned in the open with consequences for air quality. The constitutional obligations of urban local bodies for solid waste management are established by the Solid Waste Management Rules of 2016 and earlier instruments, but compliance with these obligations across the thousands of urban local bodies that have waste management responsibilities is far from universal.

7.2 Wetlands, Urban Ecology, and the Politics of Destruction

Urban wetlands are among the most ecologically valuable and most threatened natural features of India's cities. Wetlands provide flood regulation services, groundwater recharge, urban cooling, air quality improvement, biodiversity habitat, and cultural and recreational values. The wetlands of Bangalore, Hyderabad, Chennai, Mumbai, Kolkata, and Delhi have historically provided critical ecological services for these cities, and their destruction through urban expansion and encroachment has contributed to the intensification of urban flooding, heat islands, and biodiversity loss.

The constitutional framework for wetland protection, established primarily through the Ramsar Convention obligations (India is a signatory to the Ramsar Convention on Wetlands), the Wetlands (Conservation and Management) Rules of 2017, and the NGT's extensive wetland protection jurisprudence, has not prevented the systematic destruction of urban wetlands. Every major Indian city has lost a substantial proportion of its wetland area since independence, with the losses accelerating in the period of rapid urbanization from the 1980s onwards. The encroachment of wetlands for real estate development, the drainage of wetlands for urban expansion, and the use of wetland areas for dumping of construction debris and municipal waste have all proceeded in the face of a nominal legal framework requiring their protection.

The political economy of wetland destruction is straightforward: urban land is extremely valuable, wetlands near cities are politically and economically convenient for reclamation as real estate, and the political influence of real estate developers over urban local body governance is substantial. The constitutional framework for local self-government, which should make urban bodies accountable to all their citizens rather than primarily to real estate interests, has failed to provide an effective counterweight to this economic and political pressure.

7.3 The Right to Clean Air and the Constitutional Accountability of the State

The right to breathe clean air is, in any conceivable interpretation of the constitutional right to life, one of the most basic constitutional entitlements. The air quality crisis in India's cities, where millions of people are exposed daily to particulate concentrations that exceed the WHO's air quality guidelines by factors of ten to twenty, represents a sustained and systematic violation of this constitutional right on a scale that dwarfs most other forms of constitutional rights violation in the country.

The health consequences of India's air quality crisis are staggering. The Global Burden of Disease study estimates that outdoor air pollution causes approximately 1.7 million deaths in India annually, making it one of the leading risk factors for mortality. The health consequences

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fall disproportionately on the poorest urban residents, who are most likely to live near industrial facilities, major roads, and waste management sites, and who are least able to protect themselves through indoor air filtration, avoidance behavior, or access to healthcare for pollution-related illness.

The constitutional accountability of the state for these deaths and this suffering has never been adequately established. The Supreme Court's orders on Delhi's air quality have created some accountability for specific sources of pollution, but there is no general constitutional remedy available to the millions of Indians whose health is damaged by air pollution that the state has failed to regulate. The public interest litigation mechanism, which has been the primary vehicle for environmental rights enforcement, is ill-designed for the enforcement of diffuse rights violations affecting the entire population of a city or region: it can produce orders on specific sources but cannot substitute for the comprehensive regulatory framework that effective air quality management requires.

A new constitutional settlement for environmental rights should include explicit constitutional provisions for clean air as a fundamental right, should establish constitutional obligations for specific regulatory actions, should create institutional mechanisms for independent environmental monitoring and reporting, and should provide effective legal remedies for individuals and communities whose constitutional right to clean air has been violated.

CHAPTER EIGHT: ENVIRONMENTAL FEDERALISM AND THE UNION-STATE ECOLOGY CONFLICT

8.1 The Federal Structure and Environmental Governance

The constitutional distribution of environmental governance responsibilities between the Union and the states creates a framework that is in many respects poorly adapted to the ecological realities of the Indian environment. Ecosystems do not respect state boundaries. River basins, forest patches, migratory bird flyways, tiger corridors, monsoon patterns, and groundwater aquifers are distributed across state lines in ways that require integrated management across the entire ecological unit rather than fragmented management by individual states.

The Forest Conservation Act, the Wildlife Protection Act, and the Environment Protection Act are Central legislation that governs across state boundaries and gives the Union government the authority to establish environmental standards and to approve or refuse forest diversions and industrial clearances. But the implementation of these laws is delegated to state governments and to state-level agencies whose institutional capacity, political independence, and financial resources vary enormously across India's twenty-eight states and eight Union Territories.

The result is a system of environmental federalism in which the Union sets the legal framework and state governments implement it with varying degrees of commitment and capacity, in an environment of financial dependence that creates powerful incentives for states to subordinate environmental protection to the attraction of industrial investment. States that are highly

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dependent on the Union for financial transfers have limited fiscal independence to prioritize environmental spending and strong incentives to attract industrial investment through regulatory permissiveness.

8.2 State Governments and Environmental Race to the Bottom

The concept of a "race to the bottom" in environmental regulation, familiar from American environmental federalism scholarship, describes the tendency of competing jurisdictions to weaken environmental standards to attract mobile industrial investment, with the result that environmental quality declines across all jurisdictions as each responds to the competitive pressures created by others' permissiveness. The Indian constitutional framework creates structural conditions that are conducive to such a race to the bottom, though the dynamics are modified by the Union government's role in environmental clearances for major projects.

The evidence of regulatory competition in environmental matters in India is substantial. The Environmental Performance Index, published annually by Yale and Columbia Universities, ranks Indian states on environmental outcomes and governance, and the variation across states is significant. States that have prioritized industrial development through regulatory permissiveness, including several of the major industrial states, consistently show worse environmental outcomes than states that have maintained more robust environmental governance.

The constitutional remedy for race-to-the-bottom dynamics in environmental federalism is the minimum environmental standards approach, under which the Union establishes baseline environmental standards that no state may fall below, while states are free to adopt more stringent standards. This approach, which is used in several aspects of Indian environmental law, would be more effective if the baseline Union standards were themselves scientifically adequate, if the enforcement mechanisms for these standards were independent of the political pressures that affect state enforcement, and if the financial incentives facing state governments were structured to reward environmental protection rather than penalize it.

8.3 Ecological Fiscal Transfers and the Constitutional Economics of Environmental Governance

One of the most significant recent developments in India's environmental federalism is the introduction of ecological fiscal transfers, the practice of incorporating environmental criteria into the formula for fiscal transfers from the Union to the states. The 15th Finance Commission, whose recommendations cover the period 2021 to 2026, included a 10 percent weighting for forest cover in its state-specific performance grants, reflecting the principle that states that maintain or expand their forest cover are providing an ecological service to the country as a whole and should be compensated for this through fiscal transfers.

This is a constitutionally significant development because it connects the constitutional framework of fiscal federalism with the constitutional framework of environmental governance in a way that creates positive incentives for forest conservation. States that maintain their forests receive larger transfers, creating a financial counterweight to the pressures for forest diversion.

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But the ecological fiscal transfer approach has significant limitations. The 10 percent weighting for forest cover in the Finance Commission formula is modest compared with the financial incentives created by the revenue value of mining, industrial, and agricultural activities that compete with forest conservation. The methodology for measuring forest cover, as discussed earlier, includes commercial plantations that do not provide the ecological services of natural forests. And the formula does not address the full range of environmental services that states provide, including watershed protection, wetland conservation, coastal ecosystem maintenance, and clean air provision.

A reformed constitutional framework for environmental fiscal transfers should extend the scope of environmental criteria in fiscal transfers to include a wider range of ecological services, should use more ecologically meaningful metrics of environmental quality rather than simply area-based measures, and should provide significantly larger financial incentives for environmental protection to counterbalance the economic pressures for environmental exploitation.

CHAPTER NINE: INDIA'S NEIGHBORS, ECOLOGICAL BORDERS, AND THE FAILURES OF ENVIRONMENTAL DIPLOMACY

9.1 Transboundary Environmental Problems and Constitutional Foreign Policy Failures

The ecological crises of the Indian subcontinent do not respect the political boundaries that the constitution and international law have drawn. The air pollution of the Indo-Gangetic plain, which affects hundreds of millions of people in India, Pakistan, Nepal, and Bangladesh, is a regional problem that requires regional solutions. The management of shared river basins, including the Indus, the Ganges-Brahmaputra-Meghna system, and the rivers of the northeastern region, requires interstate and international cooperation that the constitutional framework for Indian foreign policy has often failed to facilitate.

The constitutional concentration of foreign policy authority in the Union executive, with no meaningful parliamentary oversight or state government participation, has produced an environmental diplomacy that is often reactive, occasionally strategic, and rarely visionary. India's approach to its transboundary ecological relationships is shaped by the same combination of nationalist pride, strategic calculation, and bureaucratic inertia that characterizes its broader neighborhood policy, and the consequences for ecological governance across the subcontinent have been seriously negative.

The most important transboundary ecological relationship in South Asia is the governance of the Indus Waters Treaty with Pakistan and the Ganga-Brahmaputra-Meghna waters with Nepal, Bhutan, and Bangladesh. These relationships are analyzed in previous parts of this textbook from the perspective of bilateral political relations. The ecological dimension of these relationships requires separate analysis.

9.2 The Ganga-Brahmaputra-Meghna System and Bangladesh

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The Ganga-Brahmaputra-Meghna river system is one of the world's largest river systems, draining a basin of approximately 1.75 million square kilometers across India, Nepal, Bhutan, China, and Bangladesh. The ecological health of this system, including its water quality, its flow regime, its biodiversity, and its sediment dynamics, is of existential importance for the approximately 700 million people who live in the basin.

The governance of this shared ecological system across multiple national jurisdictions is one of the most complex challenges of environmental diplomacy in the region. The India-Bangladesh bilateral relationship on water issues has been shaped primarily by two disputes: the management of the Farakka Barrage (which regulates the flow of the Ganga into Bangladesh) and the unresolved question of the Teesta river water sharing.

The Farakka Barrage, constructed in the 1970s to divert Ganga water to the Hooghly river to maintain the navigability of Kolkata Port, reduced the dry-season flow of the Ganga into Bangladesh by approximately 60 percent for a period of years, with severe consequences for the ecology of the Bangladesh delta, for the saltwater intrusion into agricultural land, and for the freshwater fisheries and groundwater recharge of the southwestern Bangladesh region. The Ganga Waters Treaty of 1996 established a formula for sharing the Ganga's dry-season flows, but the treaty's adequacy has been questioned by hydrological analyses that show the flows available for sharing are insufficient to meet the needs of both countries in drought years.

The Teesta river, which flows through Sikkim and West Bengal before entering Bangladesh, is the most important river for the irrigation of northern Bangladesh. The India-Bangladesh Teesta Water Sharing Agreement, which had been substantially negotiated by 2011, was blocked by the West Bengal government's refusal to concur, reflecting the constitutional problem identified in earlier parts of this textbook: the concentration of foreign policy in the Union executive without adequate mechanisms for state government participation means that the Union government may negotiate agreements that state governments, which have direct stakes in the issues, then refuse to accept. The Teesta agreement has remained unsigned for more than a decade, leaving Bangladesh without the legally secured water allocation it needs for its agricultural planning.

The ecological consequences of the failure to reach agreement on Teesta water sharing are significant for Bangladesh, but the constitutional analysis must also note the India-side consequences of the failure. The failure to institutionalize cooperative governance of the Teesta reflects the broader failure of India's constitutional framework to integrate state government interests into the foreign policy process in ways that make regional cooperation possible.

9.3 The Himalayan Ecosystem, China, and the Constitutional Implications of Transboundary Ecology

The Himalayan ecosystem, which spans India, Nepal, Bhutan, and the Tibetan Plateau, is one of the world's most ecologically significant and most ecologically threatened mountain systems. The glaciers of the Himalayas, already retreating due to climate change, are the source of rivers that provide water for approximately 1.3 billion people in South and East Asia. The forests of the Himalayan foothills, which regulate the monsoon, prevent soil erosion, and provide critical

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habitat for some of the world's most threatened wildlife, are under pressure from agricultural expansion, infrastructure development, and the hydropower industry.

China's control of the Tibetan Plateau and the headwaters of the major rivers flowing into India, including the Brahmaputra, the Sutlej, the Karnali, and others, creates a structural ecological vulnerability that the Indian constitutional order has not adequately addressed. China has been constructing large hydropower dams on the upper reaches of the Brahmaputra (Yarlung Tsangpo), with downstream implications for water flows into the Assam floodplain and the Bangladesh delta that could be severe.

The constitutional framework provides no mechanism for India to secure the ecological interests of its citizens in relation to upstream activities by foreign states that affect downstream water flows. The Ministry of External Affairs negotiates on these issues through bilateral and multilateral channels, but without constitutional mandates for the outcomes it should seek, without parliamentary oversight of the terms it accepts, and without accountability to the 100 million people in the Brahmaputra basin whose water security is at stake.

The emerging doctrine of the "no harm" rule in international watercourse law, codified in the UN Convention on the Law of Non-Navigational Uses of International Watercourses of 1997 (which India has not ratified), provides a framework under which upstream states are required not to cause significant harm to downstream states in their use of shared watercourses. India's failure to ratify this convention, like its failure to ratify the Convention Against Torture analyzed in earlier parts, reflects a preference for the flexibility of bilateral negotiation over the constraints of multilateral legal obligations, a preference that may serve short-term diplomatic interests but undermines the development of the international legal framework that India's long-term ecological interests require.

9.4 Climate Diplomacy and the Constitutional Foreign Policy Deficit

India's climate diplomacy, the management of India's relationships with other countries on the issues of climate mitigation and adaptation, is one of the most consequential aspects of Indian foreign policy and one of the most poorly served by the constitutional framework.

India is the world's third-largest emitter of greenhouse gases in absolute terms and is committed, under the Paris Agreement, to a nationally determined contribution (NDC) of significant ambition. But the constitutional framework for how India pursues its climate diplomacy, how it balances the pressure from developed countries to accelerate decarbonization with the developmental imperatives of an economy where hundreds of millions of people still lack access to reliable electricity, and how it allocates the domestic costs of climate transition across different regions and social groups, involves no meaningful constitutional mechanism for democratic deliberation and accountability.

Climate change is, from the perspective of constitutional theory, one of the most profound intergenerational justice issues that a constitutional order can confront. The decisions made now about energy systems, industrial structure, land use, and transportation infrastructure will determine the climate that India's children and grandchildren will inhabit. The constitutional

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framework for making these decisions should reflect this intergenerational dimension. It should provide for transparent, democratically accountable decision-making about climate policy. It should ensure that the costs of climate transition are distributed equitably across income groups and regions, rather than being imposed on the poorest through electricity price increases and the disruption of coal-dependent livelihoods without adequate alternatives. And it should give a genuine constitutional voice to the young people who will bear the greatest share of the climate burden.

None of these constitutional requirements are currently met by the Indian constitutional framework.

CHAPTER TEN: THE BRITISH ENVIRONMENTAL LEGACY: COLONIAL RESOURCE EXTRACTION AND ITS CONSTITUTIONAL INHERITANCE

10.1 The Colonial Environmental Legal Inheritance

The environmental law of colonial India was not designed for the protection of the environment. It was designed for the management of natural resources in the service of colonial extraction. The Indian Forest Act of 1927, which remains in force with amendments, was designed to give the colonial state control over the forests that provided timber for the railways, ships, and construction of the empire, to exclude the communities that had traditionally managed these forests from their customary governance rights, and to convert the forest estate from a communally managed commons into a state-owned and state-managed resource for industrial production.

The colonial forest governance framework displaced the elaborate systems of community forest governance that had existed across India before colonialism. The customary rights of tribal communities to forest products, to pastoral use of forest land, to shifting cultivation in forest areas, and to the sacred groves and sacred landscapes that were central to their cultural and spiritual life were either formally extinguished or reduced to revocable privileges at the discretion of the forest department. The governance knowledge, the institutional mechanisms, and the cultural practices through which communities had managed forest resources sustainably for centuries were replaced by a bureaucratic management model premised on the primacy of commercial timber production.

The ecological consequences of this displacement were, as environmental historians including Ramachandra Guha and Madhav Gadgil have comprehensively documented, deeply damaging. The colonial forest department was primarily interested in maximizing timber extraction from commercially valuable species, and its management practices typically reduced the ecological diversity of forests and depleted the stocks of valuable timber species over time. The community forest governance systems that the colonial state displaced had often been more ecologically sensitive, more economically diverse in their use of forest resources, and more institutionally resilient than the bureaucratic management that replaced them.

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The Indian Forest Act of 1927 remains the foundational legislation of Indian forest governance, despite the formal enactment of the FRA and the Forest Conservation Act. Its central provision, the power to declare reserved forests in which local communities have limited or no rights, remains operative. The forest department's administrative culture, which was shaped by the colonial tradition of forest management as a technical and commercial enterprise rather than a democratic and ecological one, has been only partially reformed by the post-independence legislative framework.

10.2 The Indian Mines and Minerals Act and the Colonial Regime of Mineral Extraction

The governance of mineral resources in India is another domain in which the colonial legal framework has survived with minimal fundamental change into the post-independence period. The Mines and Minerals (Development and Regulation) Act of 1957, while substantially different from its colonial predecessors in its formal nationalization of mineral rights, preserved the essential colonial approach of treating mineral resources as state property to be monetized through leasing to private extractors, rather than as community resources whose governance should reflect the interests of those who live on and depend on the lands where the minerals are found.

The Mines and Minerals (Development and Regulation) Amendment Act of 2021 introduced auction-based allocation of mineral blocks, replacing the discretionary allocation system that had been the source of the coal block allocation scandal. This is a constitutional improvement, because competitive auctions are more transparent and less susceptible to corruption than discretionary allocation. But the auction framework does not address the fundamental problem of community participation in mineral governance: the communities that live on and depend on the land where minerals are found continue to have no constitutional right to determine whether mining should occur, at what pace, under what environmental management conditions, or with what mechanisms for sharing the economic benefits.

The constitutional framework for mineral governance needs to be fundamentally restructured around the recognition that mineral wealth is the common property of the Indian people, including most immediately the communities whose land and livelihoods are affected by extraction, and that the governance of this common wealth requires democratic participation, equitable benefit sharing, and environmental accountability at the community level as well as at the state and national levels.

10.3 The Wildlife Protection Act and the Colonial Model of Conservation

The Wildlife Protection Act of 1972, while significantly more ecologically ambitious than its colonial predecessors, reproduces in several important respects the colonial model of wildlife conservation as a state-managed enterprise from which local communities are excluded. The creation of National Parks and Wildlife Sanctuaries under the WPA involves the declaration of areas in which no human habitation, cultivation, or resource use is permitted, and this model of "fortress conservation" has led to the displacement of tribal and other communities from protected areas, with devastating consequences for their livelihoods and without, in many cases, demonstrably improving wildlife protection.

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The conservation science community has increasingly recognized, in the past two decades, that the "fortress conservation" model is both ethically unjust and practically less effective than community-based conservation approaches that engage local communities as partners in and beneficiaries of conservation efforts. The evidence from community conservation initiatives across India, including the Van Panchayat system in Uttarakhand, the community forest management programs in various states, and the sacred grove networks across India, suggests that communities with secure tenure over forest resources and economic stakes in their protection are effective guardians of biodiversity.

The constitutional framework for wildlife conservation needs to reflect this evidence. A reformed constitutional approach to wildlife and biodiversity governance should recognize the rights of local communities in conservation areas, should require the equitable sharing of conservation benefits with these communities, should support community-based conservation governance models, and should integrate the traditional ecological knowledge of local communities into the technical management of conservation areas.

10.4 The Pollution Control Regime: From Colonial Indifference to Democratic Inadequacy

The colonial administration was largely indifferent to the pollution consequences of industrial development, reflecting the understanding that India's primary value to the empire was as a source of raw materials and as a market for manufactured goods, and that the costs of industrial pollution fell primarily on Indian subjects who had no effective political voice in colonial governance. The industrial law of colonial India imposed minimal environmental obligations on factories and mines, reflecting the priority of industrial production over the health and welfare of workers and local communities.

The post-independence period has seen the development of a substantial body of environmental regulation: the Water (Prevention and Control of Pollution) Act of 1974, the Air (Prevention and Control of Pollution) Act of 1981, the Environment Protection Act of 1986, and the Hazardous Waste Rules and their various successors. These laws represent a genuine constitutional advance over colonial indifference, and the institutions they created, the Central Pollution Control Board and the State Pollution Control Boards, have produced measurable improvements in the environmental governance of at least some categories of industrial pollution.

But the pollution control regime continues to suffer from structural weaknesses that reflect the gap between formal legal requirements and practical governance capacity. The SPCBs are chronically underfunded, understaffed, and in many states captured by the industries they regulate. The enforcement of pollution standards is inconsistent and susceptible to political pressure. The penalties for violations are often insufficient to alter industrial behavior, because the cost of compliance exceeds the expected cost of non-compliance (the probability of detection times the penalty). And the process of setting and revising emission and discharge standards has been subject to industry lobbying that has systematically weakened the standards below what ambient quality protection would require.

The constitutional reform of the pollution control regime requires not merely better enforcement of existing standards but a fundamental restructuring of the institutional framework, the

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governance model, and the incentive structures that determine compliance. Genuinely independent, adequately resourced, technically competent, and politically accountable pollution control authorities are a constitutional necessity, not a luxury.

CHAPTER ELEVEN: CONSTITUTIONAL THEORY AND THE FUTURE OF ECOLOGICAL GOVERNANCE

11.1 Earth System Governance and Constitutional Theory

The emerging interdisciplinary field of "earth system governance," synthesized in the work of scholars including Frank Biermann, Oran Young, and the Earth System Governance Project, argues that the governance of the global environment in the Anthropocene requires institutional architectures that are fundamentally different from those designed for the management of discrete environmental problems in a world where human activity was a minor perturbation of planetary systems. In the Anthropocene, as Johan Rockström and Will Steffen's planetary boundaries framework has established, human activity has become the dominant driver of change in multiple earth system processes simultaneously: climate, biodiversity, freshwater cycles, land use, ocean chemistry, and atmospheric chemistry. The governance challenge is not the management of individual environmental problems but the maintenance of the integrity of the earth system as a whole.

The implications of earth system science for constitutional theory are profound and largely unexplored. If constitutional orders are designed for the governance of human affairs within a stable natural environment, and if the stability of that environment can no longer be assumed, then constitutional theory must grapple with a new set of questions. What are the constitutional obligations of a state with respect to maintaining the planetary boundaries within which human civilization is possible? How should constitutional rights frameworks address harms that are diffuse in their causation, accumulate over decades, and are felt most severely by future generations? How should constitutional institutions be designed to govern the long-term environmental decisions that will determine the habitability of the planet for future generations?

The constitutional framework of India, designed in 1950 for the governance of a society in a world where the concept of planetary boundaries did not exist, is not equipped to answer these questions. But the intellectual tradition of Indian constitutional jurisprudence, which has shown remarkable creativity in expanding constitutional provisions to meet new challenges, provides a foundation from which these questions can be addressed.

11.2 The Rights of Nature and Deep Ecological Constitutionalism

The "rights of nature" movement, which has gained significant traction in comparative constitutional law over the past decade, argues that the constitutional protection of the environment requires not merely the recognition of human rights to a clean environment but the recognition of the intrinsic rights of natural entities, ecosystems, and species to exist, to flourish, and to regenerate their natural capacities. This approach, which challenges the anthropocentric

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assumptions of most constitutional theory, has been reflected in constitutional provisions in Ecuador (2008) and Bolivia (2009) and in judicial decisions in Colombia, New Zealand, India, and Bangladesh.

In India, the Uttarakhand High Court in 2017 declared the Ganga and Yamuna rivers to be living legal entities with rights equivalent to those of a legal person. This decision, which was the first in India to recognize the rights of natural entities, was subsequently stayed by the Supreme Court on the technical ground that the declaration would make the rivers the subject of legal rights and obligations that could not practically be exercised by entities that cannot appear in court or enter into contracts. The stay was disappointing from the perspective of ecological jurisprudence, but the intellectual development represented by the High Court's decision is significant.

The rights of nature approach connects to a deep tradition in Indian environmental thought. The concept of nature as having intrinsic value, as a living system deserving respect and protection in its own right rather than merely as a resource for human use, is embedded in Hindu, Buddhist, and Jain philosophical traditions, in the animist spiritual systems of tribal communities, and in the literary and cultural traditions of Indian civilization. The ecological jurisprudence movement, associated in India with scholars like T.R. Andhyarujina and Shyam Divan, argues that a genuinely Indian environmental constitutionalism would draw on these indigenous traditions rather than merely borrowing frameworks from the environmental law of Western liberal states.

A new environmental constitution for India could productively integrate these traditions with the contemporary science of earth system governance to create a constitutional framework that recognizes both human rights to a clean environment and the intrinsic rights of ecological systems to exist and flourish. Such a framework would represent not merely a constitutional reform but a fundamental reconceptualization of the relationship between the Indian constitutional order and the natural world on which it depends.

11.3 Ecological Democracy and the Constitutional Framework of Participation

The theoretical tradition of "ecological democracy," associated with scholars including Robyn Eckersley, Michael Saward, and Timothy Hayward, argues that genuine environmental governance requires not merely the recognition of environmental rights but the democratization of the decision-making processes through which decisions affecting the environment are made. On this account, environmental democracy requires the participation of affected communities in environmental decision-making, the inclusion of the interests of non-human nature and future generations through representative mechanisms, the transparency of environmental information, and the accountability of environmental decision-makers to those who bear the consequences of their decisions.

The Indian constitutional framework falls far short of these ecological democracy requirements. Environmental decision-making is concentrated in the executive branch, with minimal parliamentary oversight, inadequate public participation, insufficient transparency, and no effective mechanism for the representation of either future generations or non-human nature. The NGT provides some access to judicial review of environmental decisions, but this is a reactive

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and partial mechanism that cannot substitute for the proactive democratic governance of environmental resources that ecological democracy requires.

A constitutionally reformed approach to environmental democracy would include, at minimum, mandatory public participation in major environmental decisions from the earliest stages of planning; constitutional rights of access to environmental information; constitutional requirements for environmental impact assessment that genuinely assesses cumulative and systemic impacts rather than project-specific impacts in isolation; independent scientific advice to government on environmental matters through constitutionally established advisory bodies; constitutional standing for civil society organizations representing the interests of future generations in environmental adjudication; and constitutionally mandated environmental planning processes that engage citizens and communities in the determination of long-term environmental goals.

11.4 The Paris Agreement, SDGs, and Constitutional Environmental Obligations

India's commitments under the Paris Agreement on climate change and the United Nations Sustainable Development Goals (SDGs) create an international constitutional framework for environmental governance that the domestic constitutional order is obligated to translate into enforceable rights and obligations. The relationship between international environmental law and domestic constitutional law in India has been developed through the Supreme Court's doctrine that international treaty obligations that India has accepted are relevant to the interpretation of constitutional rights, even where the treaties have not been specifically enacted into domestic law.

The M.K. Ranjitsinh judgment's recognition of the constitutional right against climate change explicitly connects this right to India's Paris Agreement obligations and to the international scientific consensus on climate change expressed in the IPCC reports. The case expanded in scope to address India's broader obligations under international environmental conventions and its constitutional duty to safeguard human life, health, and equality in the face of a rapidly changing climate. Health and Human Rights Journal

This connection between international environmental obligations and domestic constitutional rights is constitutionally significant because it provides the legal foundation for holding the state accountable to its own internationally expressed commitments. If the right against climate change is a fundamental right, and if the content of that right is partly defined by India's Paris Agreement obligations, then the state's failure to implement policies consistent with those obligations may be a fundamental rights violation.

The constitutional reform agenda for international environmental law should include the explicit constitutionalization of India's major international environmental obligations, including the Paris Agreement NDC, the Convention on Biological Diversity's biodiversity targets, and the SDG environmental targets. Making these obligations constitutional would give them the binding domestic legal force that international treaty law alone cannot provide in the Indian legal system.

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CHAPTER TWELVE: A NEW ENVIRONMENTAL CONSTITUTION: PRINCIPLES FOR RECONSTRUCTION

12.1 The Constitutional Design Principles for Environmental Governance

The analysis throughout this part of the textbook leads to the conclusion that India needs not merely better enforcement of its existing environmental laws but a fundamental constitutional reconstruction of its approach to environmental governance. The colonial inheritance of a state designed for resource extraction, the development model of the postcolonial period premised on the exploitation of natural capital, and the contemporary political economy of environmental corruption have together produced a constitutional order that is structurally incapable of delivering the environmental protection that the right to life demands and that the ecological crisis requires.

The principles for a reconstructed environmental constitution can be stated at several levels: the foundational, the structural, the rights-based, and the institutional.

At the foundational level, a new environmental constitution should recognize ecological integrity as a constitutional value of the highest order, coequal with and not subordinate to economic development. This recognition should be expressed in a constitutional provision that treats the maintenance of the ecological systems on which all human life depends as a prerequisite for the exercise of all other constitutional rights, and that requires all constitutional institutions to take environmental consequences into account in their decisions.

The theoretical foundation for this principle is provided by Klaus Bosselmann's concept of ecological integrity as the foundation of sustainable development, by the earth system science principle that the stability of planetary systems is the precondition for human welfare, and by the Indian philosophical traditions that treat the natural world as having intrinsic value, not merely instrumental value for human purposes.

At the structural level, a new environmental constitution should address the distribution of environmental governance responsibilities between the Union and the states in ways that create genuine cooperative federalism for ecological management. This requires a constitutional framework that enables integrated management of ecological units that cross state boundaries, that provides adequate fiscal resources for environmental governance at all levels, that creates effective mechanisms for inter-state environmental cooperation, and that establishes minimum environmental standards below which no level of government may fall.

At the rights level, a new environmental constitution should include explicit, justiciable constitutional rights to a clean and healthy environment, to clean air and clean water, to healthy ecosystems, and to protection from the adverse effects of climate change. These rights should be enforceable by all persons, including future generations through representative mechanisms, and should be subject to judicial enforcement through mechanisms that are accessible to the most affected communities, not merely to those with the resources for expensive constitutional litigation.

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At the institutional level, a new environmental constitution should establish constitutionally independent environmental governance institutions with genuine independence from political control, adequate resources and technical capacity, transparent decision-making processes, and effective accountability to the public. A constitutionally independent National Environmental Authority, with the authority to set environmental standards, conduct environmental assessments, enforce compliance, and litigate in the public interest, would represent a fundamental improvement over the current fragmented and politically dependent institutional landscape.

12.2 Constitutionalizing Environmental Rights: The South African and Costa Rican Models

The comparative constitutional experience of countries that have enacted strong environmental rights provisions offers instructive models for India's constitutional reform. The South African Constitution of 1996, widely regarded as the most sophisticated constitution of the post-Cold War generation, includes in Section 24 the right of every person to an environment that is not harmful to health or wellbeing, and to have the environment protected for the benefit of present and future generations. The South African Constitutional Court has developed a substantial jurisprudence under Section 24 that holds the state accountable for environmental harms, requires prior assessment of environmental impacts, and recognizes the connection between environmental rights and other fundamental rights.

Costa Rica, despite lacking an explicit constitutional environmental rights provision, has through its Constitutional Chamber developed one of the most robust environmental rights jurisprudences in the world, holding that the constitutional right to life and health implicitly includes a right to a healthy environment and using this implied right to invalidate a wide range of government actions with adverse environmental consequences.

Ecuador's constitutional recognition of Pachamama (Mother Earth) as having rights, adopted in the 2008 Constitution, represents the most radical innovation in environmental constitutionalism, recognizing not merely human rights to a clean environment but the rights of nature itself to exist, be maintained, and regenerate. The Ecuadorian constitutional provisions have been applied by courts to order the restoration of damaged ecosystems and to require the state to protect natural areas from extractive industry.

The Indian constitutional reform should draw on these comparative models while adapting them to the specific social, ecological, and constitutional context of India. The South African model of justiciable environmental rights with a progressive realization standard for positive obligations, combined with the earth system governance framework of planetary boundaries and the indigenous Indian philosophical traditions of the intrinsic value of nature, would provide a foundation for a genuinely transformative environmental constitution.

12.3 The Peoples' Environmental Charter: A Constitutional Manifesto

The argument developed throughout this part of the textbook, when translated into the language of constitutional design, suggests the following elements of what might be called a Peoples' Environmental Charter for a reconstituted Indian constitutional order.

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First, a foundational recognition that the natural world, in all its dimensions including the atmosphere, the waters, the soils, the forests, the biodiversity, and the climate, is the common heritage of all the people of India, including those not yet born, held in trust by the Indian state for the benefit of all generations. No generation has the right to consume, degrade, or exhaust this common heritage at the expense of those who come after.

Second, a constitutional right of every person to live in an environment that is not harmful to health or wellbeing, to access clean air, clean water, and sufficient and safe food, and to protection from the adverse effects of environmental pollution and climate change. These rights are justiciable and enforceable in courts, and the state bears the burden of demonstrating that any environmental harm that it permits or causes is justified by a compelling public purpose that cannot be achieved by less harmful means.

Third, a constitutional duty of the state to take all reasonable measures to prevent and remedy environmental harm, to assess the environmental consequences of development decisions before they are made, to involve affected communities in environmental decision-making, to maintain the ecological systems and processes on which human wellbeing depends, and to honor India's international environmental obligations including those relating to climate change, biodiversity, and shared water resources.

Fourth, a constitutional recognition of the rights of tribal and other forest-dwelling communities over the land, forests, and resources that they have traditionally managed, including the right to refuse or condition the entry of extractive industries into their territories, the right to share in the economic benefits of any resources extracted from their territories, and the right to govern their territories according to their own ecological knowledge and traditions.

Fifth, a constitutional framework for intergenerational justice that requires environmental decision-makers to assess the long-term consequences of their decisions for future generations, to apply the precautionary principle in cases of scientific uncertainty about irreversible harms, and to maintain the ecological capital of the nation at a level that is at least as healthy as that received from the previous generation.

Sixth, constitutionally independent environmental governance institutions including an independent National Environmental Authority with the powers of investigation, standard-setting, clearance, enforcement, and litigation that are necessary for effective environmental governance.

Seventh, the explicit repeal and replacement of the colonial environmental laws, including the Indian Forest Act of 1927, with legislation that reflects democratic principles of community governance, ecological sustainability, and constitutional rights, rather than the colonial principles of state ownership and bureaucratic management.

Eighth, a constitutional provision for environmental access to justice, including the right of all persons to receive environmental information, to participate in environmental decision-making, and to have access to courts and tribunals for the enforcement of environmental rights without prohibitive financial barriers.

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12.4 The Ecological Crisis and the Constitutional Moment

The ecological crisis facing India is not simply an environmental problem that can be addressed by better policies within the existing constitutional framework. It is a constitutional crisis, a crisis of the values, institutions, and power arrangements that the constitutional order embodies, and it requires constitutional solutions.

The connection between environmental degradation and constitutional failure is not accidental. The colonial inheritance of a state designed for extraction, the development model that treats nature as an infinite resource for infinite growth, the political economy that makes environmental corruption profitable and environmental protection costly, the institutional framework that concentrates environmental governance in unaccountable bureaucracies, the federal arrangements that create incentives for regulatory permissiveness, and the rights framework that treats environmental rights as aspirational rather than enforceable: these are all constitutional features, and they are all contributing to the ecological catastrophe that is unfolding in Indian lands, waters, and atmosphere.

The people of India, who are the primary victims of this ecological catastrophe, are also its potential rescuers. The farmers whose livelihoods are being disrupted by climate change, the fishing communities whose waters are being poisoned by industrial effluent, the urban residents who breathe air that damages their lungs, the tribal communities whose forests are being destroyed by mining and infrastructure, the children who will inherit a degraded ecological heritage: these communities have the deepest understanding of what environmental constitutional failure costs and the strongest interest in its remedy.

The constitutional reform of India's environmental governance is therefore not a technical exercise for environmental lawyers and constitutional scholars. It is a democratic project, connected to the broader project of constitutional reconstruction analyzed throughout this textbook, and it requires the active engagement of the communities who are bearing the costs of the current order's failures. The ecological future of India and the constitutional future of India are the same future.

CHAPTER THIRTEEN: RECENT DEVELOPMENTS 2024-2026 AND THE CONTEMPORARY ENVIRONMENTAL CONSTITUTIONAL MOMENT

13.1 M.K. Ranjitsinh and the Constitutional Climate Right: Jurisprudential Analysis

The Supreme Court's recognition in April 2024 of the constitutional right against climate change in M.K. Ranjitsinh and Ors. v. Union of India and Ors. is the most significant development in Indian environmental constitutional law since the Vellore Citizens' Welfare Forum judgment recognized the precautionary principle and the polluter pays principle in 1996.

The judgment arose from a petition filed by wildlife conservationist M.K. Ranjitsinh concerning the protection of the Great Indian Bustard, one of India's most critically endangered bird species,

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whose extinction is being accelerated by collision with overhead power lines in its Rajasthan habitat. The case raised the question of whether the Central Government could override the Supreme Court's own earlier direction to use underground power cables in the Bustard's habitat, citing the cost and technical challenges of underground cabling.

The Court's expansion of the issue to address the constitutional dimensions of climate change more broadly was a significant example of the judicial creativity that has characterized Indian environmental jurisprudence. The bench highlighted that India's ambitious targets for renewable energy form one of the key strategies in India's efforts to combat the effects of climate change, with the country's commitment to transitioning to non-fossil fuels described as not just a strategic energy goal but a fundamental necessity for environmental preservation. Verfassungsblog

The jurisprudential analysis of the judgment has been positive but also cautious. Legal scholars including Armin Rosencranz, Shibani Ghosh, and others at the Centre for Policy Research's Initiative on Climate, Energy and Environment have noted that the recognition of the climate right is constitutionally significant but that its content and its enforcement mechanisms remain unclear. What does the right against climate change require the state to do? What standard of review should courts apply to challenges brought under this right? What is the relationship between this right and the state's legitimate development interests?

The German Constitutional Court's 2021 climate judgment provides one model for answering these questions: the German Court held that the state must specify how it will achieve its long-term climate targets in a way that does not impermissibly shift the burden of emissions reductions onto future generations, requiring interim targets and policies that ensure a fair distribution of the climate burden across time. An Indian constitutional court applying similar reasoning to the M.K. Ranjitsinh right would need to examine whether India's NDC under the Paris Agreement is constitutionally adequate, whether the state's current policies are consistent with meeting those commitments, and whether the continued expansion of coal capacity is constitutionally justifiable given the constitutional right against climate change.

13.2 Environmental Clearances, NGT Reforms, and 2025 Developments

The Environment Protection (Management of Contaminated Sites) Rules, 2025 gave clear authority to the regulatory authority to reassess sites and impose further obligations on the occupier or responsible person. Iclg This development, while modest in scope, represents the kind of incremental regulatory improvement that has characterized Indian environmental law development: the plugging of specific regulatory gaps through new rules without fundamental structural reform of the regulatory framework.

The Air Act and the Water Act were amended in 2024 and 2025 to exempt white category non-polluting industries from consent mechanisms and certain industries from obtaining prior consent to establish. These exemptions, while rationalizing the regulatory burden on genuinely low-impact industries, have been criticized by environmental lawyers for reducing the regulatory oversight of a category of industrial activity without adequate evidence about the cumulative environmental impacts of exempted industries.

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The Supreme Court's 2025 order rejecting post-facto environmental clearances, requiring that all environmental assessments must precede project approval, is constitutionally important as a reaffirmation of the precautionary approach. The widespread practice of obtaining environmental clearances after project commencement, sometimes after significant environmental damage had already occurred, was a systemic abuse of the EIA process that the 2025 order addresses. But the enforcement of this principle against major infrastructure projects, where the political and economic stakes are highest, will require sustained judicial attention and institutional follow-through.

The National Green Tribunal's environmental jurisprudence in 2024-2025 has continued to develop across a wide range of issues. The Tribunal's orders on the regulation of illegal sand mining (one of the most environmentally damaging and most politically connected activities in India), on the protection of coastal mangroves, on the management of plastic waste, and on the accountability of municipal corporations for solid waste have maintained the NGT's role as the primary institutional counterweight to the administrative and political pressures for environmental governance failure.

The constitutional question of the NGT's independence from executive control, raised by the Tribunals Reforms Act controversy, remains unresolved in its fundamental dimensions even after the 2025 Supreme Court judgment striking down the unconstitutional provisions. The executive's ability to influence the composition of the NGT through the appointment process, the management of its budget and administrative resources, and the pace of filling judicial vacancies continues to constrain the Tribunal's independence and effectiveness.

13.3 The Forest Rights Act, Implementation Gaps, and 2024-2026 Developments

The implementation of the Forest Rights Act remained deeply inadequate in 2024-2025. The Ministry of Tribal Affairs data showed rejection rates for individual forest rights claims averaging above 40 percent in several major states, with rejection orders frequently containing inadequate reasoning and being issued without proper application of the procedural requirements of the FRA. The gram sabha processes for community forest rights recognition were functioning in some states and regions but remained largely non-operational in others.

The Forest Conservation Act Amendment of 2023, which expanded the scope of activities that can be conducted in forest areas without forest clearance and which modified the definition of forest for the purposes of the Act, was challenged before the Supreme Court by petitioners who argued that the amendments weakened the constitutional protections for forests and violated the fundamental rights of forest-dependent communities. The constitutional challenge was pending as of early 2026, and its resolution will be significant for the long-term framework of forest constitutional governance.

The adivasi rights movement, which has been one of the most persistent and courageous forces in Indian constitutional politics, continued in 2024-2025 to challenge the displacement of tribal communities from forest land for conservation, mining, and infrastructure purposes. The protests in Hasdeo Arand, in Niyamgiri, and across the tribal belt of central India represent the live

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democratic pressure for constitutional reform that this textbook has argued is the only genuine driver of constitutional change.

13.4 Climate Finance, Loss and Damage, and India's Constitutional Obligations

The COP28 agreement in Dubai in December 2023 on the Loss and Damage fund, and the ongoing negotiations on climate finance for developing countries, create new dimensions of India's international climate obligations with constitutional implications. The principle of loss and damage holds that developed countries, which have historically contributed the most to cumulative greenhouse gas emissions and bear the greatest responsibility for climate change, owe compensation to developing countries that are disproportionately affected by climate impacts for which they bear little responsibility.

India, as both a major developing country and a rapidly growing emitter, occupies a complex position in the climate finance negotiations. The constitutional dimensions of this position include the obligations of the Indian state to demand adequate climate finance from developed countries for the adaptation and mitigation costs borne by its most climate-vulnerable citizens, and the obligations of the Indian state toward its own citizens to distribute the costs and benefits of climate transition equitably.

The constitutional framework for climate finance governance in India should ensure that climate adaptation funding reaches the most vulnerable communities, that the poorest and most climate-exposed regions receive priority in adaptation investment, and that the communities most affected by climate change have a genuine voice in the planning and implementation of adaptation measures. These requirements connect the climate finance question to the broader constitutional themes of equitable power distribution, democratic participation, and the protection of marginalized communities that have been the central concerns of this textbook.

The court in the 2026 period has been navigating an increasingly complex terrain of climate obligations. The extension of free compulsory education rights and the connection of this to foundational learning represent a judicial recognition that constitutional rights must evolve with scientific understanding, including the understanding of how environmental conditions affect children's development. A PIL seeking to extend the fundamental right to free and compulsory education to children aged 3 to 6 years reflects the court's interest in examining nationwide implementation through a committee involving experts, connecting educational rights to the broader context of environmental and social wellbeing. The Prayas India

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CHAPTER FOURTEEN: THE CONSTITUTIONAL FUTURE: ECOLOGICAL JUSTICE AND DEMOCRATIC RECONSTRUCTION

14.1 The Integration of Ecological and Democratic Constitutional Reform

The argument throughout this part of the textbook has been that the ecological crisis facing India is inseparable from the broader constitutional crisis analyzed throughout this textbook. The two

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crises have common causes: the colonial inheritance of a state designed for extraction and control rather than for the service and empowerment of its citizens, the political economy of electoral finance that makes corruption profitable and accountability costly, the concentration of power in an unaccountable executive that lacks the institutional independence to prioritize long-term ecological and social goods over short-term political and economic interests, and the inadequacy of the rights framework to protect the most vulnerable citizens from the consequences of these structural failures.

The constitutional reform agenda for environmental governance cannot therefore be pursued independently of the broader constitutional reform agenda. A new environmental constitution that operates within the existing framework of concentrated executive power, inadequate institutional independence, colonial-era administrative culture, and weak rights enforcement will not deliver environmental justice any more effectively than the existing constitutional framework has. Environmental constitutional reform and democratic constitutional reform are the same project.

This integration means, concretely, that environmental constitutionalism must be connected to the federalism reform agenda (to ensure that the communities most affected by environmental decisions have genuine governance authority over them), to the rights enforcement reform agenda (to ensure that constitutional environmental rights are accessible to the poorest citizens, not merely to those who can afford expensive litigation), to the anti-corruption agenda (to address the systematic corruption of environmental clearance processes), to the institutional independence agenda (to create genuine independence for environmental governance institutions), and to the accountability agenda (to ensure that those who make environmental decisions are genuinely accountable to those who bear their consequences).

14.2 The Rights of Affected Communities and the Principle of Environmental Democracy

The most powerful argument for a new constitutional approach to environmental governance in India is not the argument from abstract ecological principles but the argument from the lived experience of the communities most affected by environmental governance failure. The tribal communities evicted from forests they have managed for generations, the fishing communities whose livelihoods have been destroyed by coastal industrial development, the farming communities whose groundwater has been contaminated by industrial effluent, the urban poor who breathe some of the most polluted air in the world, the children whose physical and cognitive development is damaged by lead, mercury, and particulate pollution, these communities know, from the most direct and immediate experience, what the constitutional failure of environmental governance costs.

The principle of environmental democracy, properly understood, requires that these communities be not merely consulted about environmental decisions but empowered to govern the ecological resources on which they depend. This is a constitutional principle with deep roots in India's own political and philosophical traditions: Gandhian gram swaraj (village self-governance), Ambedkarite social democracy, the cooperative movement's model of community economic governance, and the tribal governance traditions that the Fifth Schedule and PESA were designed, however inadequately, to protect.

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A new environmental constitutional order would begin with the empowerment of these communities: with the constitutional recognition of their rights to forest land, to clean water, to protection from industrial encroachment, to share in the economic benefits of resources extracted from their territories, and to participate as equals in the governance of the ecological systems on which they depend. This is not a radical departure from the constitutional promises of the Preamble: it is the realization, finally and fully, of the promises of justice, liberty, equality, and fraternity that have been made and broken since August 1947.

14.3 Ecological Constitutionalism and the Civilizational Choice

The ecological crisis facing India is ultimately a civilizational question: what kind of civilization does India wish to be? A civilization that consumes its ecological inheritance for the benefit of the current generation, concentrating the benefits in the hands of the few and distributing the costs across the many, is a civilization that is neither just nor sustainable. A civilization that recognizes its ecological inheritance as a common heritage held in trust for future generations, that distributes the benefits of ecological resources equitably, that governs the commons through democratic participation, and that holds power accountable for its environmental consequences is a civilization worth building.

The Indian constitutional tradition has the intellectual and moral resources for this civilizational choice. The Preamble's commitment to justice in all its dimensions includes ecological justice. The fundamental rights chapter's commitment to equality includes ecological equality: equal protection of the right to clean air, clean water, and healthy ecosystems for all citizens. The directive principles' vision of a society in which the material resources of the community are distributed in ways that serve the common good includes the material resources of the ecological commons.

What is missing is not the vision. What is missing is the constitutional architecture, the institutional machinery, and the democratic political will to translate the vision into reality. Building that architecture, creating those institutions, and mobilizing that political will is the constitutional task of the current generation of Indian citizens.

The note at the end of Part Seven stated that Part Eight would address the constitutional framework of environmental rights, climate justice, and ecological governance. That framework has been addressed in the chapters above. But the analysis has confirmed what the broader argument of this textbook has been from the beginning: that environmental constitutional reform cannot be separated from democratic constitutional reform, that the ecological crisis and the democratic crisis are the same crisis viewed from different angles, and that the solution requires not tinkering at the margins of an inherited framework but a fundamental reconstitution of the constitutional order on the principles of justice, democracy, ecological sustainability, and genuine popular sovereignty.

The Constitution of India promises these things. It has not delivered them. The gap between promise and reality is the space where constitutional courage must operate, where democratic pressure must be applied, and where the future of India, and of the Indian environment, will be determined.

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CONCLUDING REFLECTIONS ON PART EIGHT: ECOLOGY, DEMOCRACY, AND THE CONSTITUTIONAL IMPERATIVE

The analysis in Part Eight has demonstrated that India's environmental constitutional order is characterized by a profound and structurally determined gap between its legal aspirations and its material consequences. The gap is not the result of bad luck, inadequate science, or the insufficient commitment of individual officials. It is the result of a constitutional architecture designed for a different purpose than the protection of the Indian environment and the ecological rights of Indian citizens.

The colonial inheritance of a state designed for resource extraction has been maintained in the postcolonial constitutional framework through the survival of colonial environmental laws, colonial administrative cultures, and colonial models of natural resource governance as state property to be monetized. The postcolonial development model has compounded this inheritance by treating the exploitation of natural capital as the primary instrument of economic growth, without constitutional mechanisms to ensure that the costs of this exploitation are distributed equitably or that the pace of exploitation remains within ecological limits.

The contemporary political economy of environmental corruption, driven by the intersection of massive economic stakes, inadequate institutional independence, and the failure of constitutional accountability mechanisms, has further degraded the already inadequate environmental governance framework. The constitutional failure of environmental governance is thus a symptom of the same structural problems that produce corruption in all other domains of Indian governance: the concentration of unaccountable power, the inadequacy of institutional independence, the weakness of democratic accountability, and the colonial inheritance of a state that was designed to serve the interests of those at the top at the expense of those at the bottom.

The solution to the environmental constitutional crisis is therefore inseparable from the solution to the broader constitutional crisis. A new constitutional order that distributes power genuinely, that creates independent institutions, that enforces rights effectively for all citizens, that eliminates the colonial administrative inheritance, and that organizes the political economy around the service of the common good rather than the enrichment of the powerful, will also be an order that can deliver environmental justice, ecological sustainability, and constitutional protection for the natural world on which India's civilization depends.

The ecological future of India and the constitutional future of India are one and the same. The work of building them is the work of the Indian people, beginning now, refusing to wait any longer for a constitutional order that has been promised and has not been delivered since the midnight of August 14, 1947.

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Glossary of Key Terms Used in Part Eight

Ecological Integrity: The condition of an ecosystem in which biodiversity, biological processes, and ecosystem functions are maintained in a way consistent with the ecosystem's natural state; used in constitutional theory as a foundational value that constrains all other constitutional provisions.

Earth System Governance: The set of international and national institutions, norms, and processes through which human societies manage the impacts of human activity on the earth system as a whole, including climate, biodiversity, water cycles, and biogeochemical processes.

Environmental Democracy: The application of democratic principles to environmental governance, requiring transparency, participation, access to justice, and accountability in environmental decision-making.

Planetary Boundaries: The scientific framework developed by Johan Rockström and others identifying nine earth-system processes within which human civilization can safely operate; the framework for understanding constitutional environmental obligations from an earth system science perspective.

Rights of Nature: The legal doctrine recognizing natural entities, including rivers, forests, and ecosystems, as legal subjects with rights to exist, regenerate, and flourish, as opposed to merely objects of human environmental rights.

Post-Facto Environmental Clearance: The grant of environmental approval for a development project after the project has already commenced or been completed; rejected as unconstitutional by the Supreme Court in 2025 as inconsistent with the precautionary principle.

Community Forest Rights: The rights of tribal and other traditional forest-dwelling communities over community forests, as recognized under the Forest Rights Act of 2006, including the right to manage, protect, and use forest resources.

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Climate Migration: The movement of persons or groups displaced primarily by the adverse effects of climate change, including sea-level rise, desertification, extreme weather events, and the disruption of agricultural livelihoods; a category without formal legal protection in the Indian constitutional framework.

Intergenerational Equity: The principle of fairness between present and future generations in the use and governance of natural resources; a constitutional obligation implicit in the right to life and the directive principles of the Indian Constitution.

Environmental Constitutionalism: The branch of constitutional law and theory concerned with the incorporation of environmental rights, duties, and governance principles into constitutional frameworks; the theoretical framework for evaluating India's constitutional approach to ecological governance.

Ecological Fiscal Transfers: The practice of incorporating environmental performance criteria into fiscal transfer formulas from central to state governments, creating financial incentives for environmental protection; partially implemented through the 15th Finance Commission's forest cover weight in state-specific grants.

End of Part Eight

Part Nine will address: The Constitutional Framework of Labour Rights, Social Security, and the Constitutional Economics of Inequality in India.

This part has been written drawing on all available scholarship, judicial decisions, and empirical evidence up to April 2026, including the M.K. Ranjitsinh climate rights judgment of April 2024, the Tribunals Reforms Act judgment of 2025, the Tamil Nadu Governor judgment of 2025, the Environment Protection (Management of Contaminated Sites) Rules of 2025, the developments in Forest Rights Act implementation, the ongoing climate and environmental litigation before the National Green Tribunal and the Supreme Court, and the theoretical and comparative constitutional scholarship available as of early 2026.

Note for the Reader: The core title of this textbook is "Problems with The Constitution of India: Commentaries, Critiques And Necessary Reforms: A Jurisprudential, Historical, Philosophical and Political Textbook." Readers approaching Part Eight are advised to engage with the material in the context of the broader constitutional analysis developed in Parts One through Seven, which established the foundational argument that India's constitutional order is structurally compromised by its colonial inheritance, its centralizing design, its inadequate rights enforcement, its institutional capture, and its political economy of corruption. The ecological failures analyzed in Part Eight are not anomalies within an otherwise functional constitutional order: they are expressions of the same structural dysfunctions that have been identified across every domain of constitutional governance throughout this textbook.

PART NINE: THE REPUBLIC OF UNFULFILLED PROMISES

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Economic Dispossession, Institutional Corruption, the Nationalist Distortion, the Victimization of the People, and the Comprehensive Case for Constitutional Renewal

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PREFACE TO PART NINE

This part of the textbook arrives at a juncture that, in the long intellectual journey through the Indian constitutional order, demands the most unflinching honesty. Parts One through Eight have established the structural, historical, philosophical, and jurisprudential framework of critique. They have traced the colonial genome of the Constitution, examined the paradoxes of the basic structure doctrine, dissected the fiction of Indian federalism, interrogated the class character of fundamental rights enforcement, analyzed the concentrated and unaccountable executive, surveyed the declining legislature, probed the politicized judiciary, mapped the geographic and cultural dispossessions of tribal and dalit communities, and confronted the philosophical contradictions of Ambedkar's great constitutional experiment.

Part Nine now turns to questions that are, if anything, even more charged: the relationship between constitutional architecture and economic inequality, the deep structural roots of corruption in the constitutional order, the process by which parliamentary democracy has been converted into a vehicle for nationalist authoritarianism, the systematic ways in which the very citizens the Constitution was designed to protect have been turned into its primary victims, and the accumulating argument for why the document must be either fundamentally reimagined or replaced altogether.

These are not merely academic arguments. They are arguments with consequences for the daily lives of 1.4 billion people. Every page of this analysis represents, behind the theoretical apparatus, the lived experience of human beings born into the Indian constitutional order who have discovered, across three-quarters of a century of its operation, that the promises of the Preamble, the sovereignty, the justice, the liberty, the equality, the fraternity, are for millions of them words spoken in a language they were never given the tools to understand, about a system they were never given the power to shape, offering protections they have never had the means to claim.

This part is written in the conviction that understanding this reality, in its full depth and structural complexity, is the necessary precondition for changing it.

CHAPTER ONE: ECONOMIC CONSTITUTIONALISM AND THE GREAT DISPOSSESSION

1.1 The Constitution's Economic Philosophy: A Contested Inheritance

Every constitution makes choices about the economic order it will govern, regulate, protect, or transform. These choices, even when they appear neutral or technical, are always political. They

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reflect the balance of social forces present at the moment of constitutional founding, the ideological commitments of the framers, and the institutional constraints within which they worked. The Indian Constitution's approach to the economic order is no exception, and understanding it is essential to understanding why the economic history of independent India looks so different from the vision of social and economic justice that the Constitution's Preamble announces.

The framers of the Indian Constitution faced a genuine ideological plurality. The Constituent Assembly included socialists who wanted a constitution that would authorize radical redistribution, nationalization of major industries, and land reform. It included Gandhians who wanted a constitution oriented toward village self-sufficiency and the decentralization of economic life. It included economic liberals who wanted a constitution that would protect property rights and enable the market economy. And it included pragmatists, dominant in the leadership of the Congress party, who wanted a constitution flexible enough to pursue any of these approaches without being constitutionally committed to any of them.

The compromise that emerged from this plurality was deeply unstable and has produced contradictions that continue to characterize Indian economic governance. The Directive Principles of State Policy, as examined in earlier parts of this textbook, encoded the social and economic aspirations of the Constitution in non-justiciable form, effectively placing them beyond the reach of legal enforcement. The fundamental rights, particularly the original right to property under Articles 19(1)(f) and 31, protected individual property against state redistribution. The Centre-state financial relationship concentrated fiscal power at the Union level in ways that constrained the capacity of state governments to pursue independent economic agendas.

The result was a constitutional economic framework that was neither genuinely socialist nor genuinely liberal, neither strongly redistributive nor strongly protective of market freedoms, but a shifting compromise whose content at any given moment was determined by the political calculations of whoever controlled the central government.

What this constitutional ambiguity concealed, and what has become increasingly clear across seven decades of experience, is that the constitutional framework consistently operated in ways that benefited the propertied, the educated, and the politically connected at the expense of the landless, the illiterate, and the marginalized. This was not always the result of deliberate design. It was frequently the result of institutional default: of legal frameworks that required economic actors to navigate complex regulatory environments that only the sophisticated could navigate, of property rights protections that the rich could enforce through litigation that the poor could not afford, of public goods provision that reached the organized and the urban before the dispersed and the rural.

The constitutional arrangement between the citizen and the economic order was, from the beginning, an arrangement of profound structural inequality.

1.2 Land, Dispossession, and the Constitutional Betrayal of the Rural Majority

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The land question is the foundational economic question of the Indian Constitution, and the constitutional history of land rights is a history of systematic betrayal of the rural poor in whose name land reform was promised.

At independence, the rural majority of India lived under conditions of acute land inequality. In most parts of the country, a small minority of landlords, zamindars, jagirdars, and inamdars controlled the overwhelming majority of agricultural land, while the vast majority of the rural population subsisted as tenants paying rent to these landlords, as agricultural laborers entirely dependent on wage employment, or as small holders with tiny uneconomic plots insufficient to support their families. This land inequality was not merely an economic problem. It was a social and political structure that reproduced itself through caste hierarchy, through the economic dependence of the poor on the rich, and through the control of local social institutions by the landowning class.

The Congress governments of the 1950s and 1960s enacted a series of land reform laws at the state level: zamindari abolition acts, land ceiling legislation that imposed maximum limits on landholding, and tenancy protection laws that gave occupancy rights to cultivating tenants. These were significant legislative initiatives, and in some states they had significant redistributive effects. The zamindari abolition legislation was largely effective in eliminating the formal juridical status of landlords as intermediaries between the state and the cultivating peasantry, even if it left many former landlords in possession of substantial residual landholdings through various exemptions and legal devices.

But the land ceiling legislation, which was the instrument that could have effected genuine redistribution of agricultural land from the rich to the landless, was a comprehensive failure. Land ceiling laws were enacted by virtually every state, but they were systematically evaded by the landowning classes through a variety of devices: fictional transfers to family members to fragment holdings below the ceiling, benami (fictitious name) transfers to trusted retainers and servants, conversion of agricultural land to non-agricultural uses that were exempt from the ceiling, and direct corruption of the revenue officials responsible for identifying surplus land. The political class that enacted the ceiling legislation was itself dominated by landowners who had no interest in its effective implementation, and the revenue bureaucracy that was supposed to administer it was socially embedded in the same landed classes whose holdings it was supposed to constrain.

The result is the continuing land inequality of rural India, which after seven decades of constitutional governance remains among the highest in the world. According to the Socio-Economic Caste Census conducted in 2011, nearly three-quarters of rural households were landless or near-landless. The situation has not materially improved since then. The concentration of agricultural land ownership remains acute, and the small and marginal farmer population, with holdings below two hectares, constitutes the overwhelming majority of agricultural households while controlling a minority of agricultural land. Landlessness among scheduled caste and scheduled tribe communities is even more acute.

This is not a failure of constitutional aspiration. The Constitution's Directive Principles explicitly directed the state to prevent concentration of wealth and means of production, to distribute

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ownership and control of the material resources of the community to subserve the common good. The failure is one of implementation, which is in turn a failure that the Constitution's design enabled: by making the social and economic directives non-justiciable, by concentrating the political power to implement or evade them in the hands of the very classes with the most to lose from their implementation, and by failing to build any institutional mechanism for independent monitoring and enforcement of land reform.

The constitutional accountability gap in economic policy, the absence of any mechanism by which citizens can hold the government legally responsible for failing to pursue the economic justice mandated by the Directive Principles, is not a neutral design feature. It is a design feature that systematically benefits those with economic and political power at the expense of those without it.

1.3 The Urban Poor and the Constitutional Fiction of Property Rights

The constitutional protection of property rights, in its various iterations across the amendment history, has had a particularly perverse relationship with the lives of India's urban poor. The story of urban property rights in India is a story of formal constitutional protections that protect the powerful and exclude the vulnerable.

India's cities have grown at extraordinary speed since independence, absorbing hundreds of millions of migrants from rural areas seeking employment, escape from caste oppression, or economic opportunity. These urban migrants have, for the most part, settled in informal settlements, slums, and unauthorized colonies that exist outside the formal legal framework of urban property rights. They have built homes, established communities, developed local economies, and created social networks in areas that the state regards as squatter settlements on public or private land to which the settlers have no legal title.

The constitutional treatment of these informal settlers reveals with particular clarity the class character of property rights enforcement. When a corporation's formally titled property is threatened by regulatory action, it can invoke Article 300A (the constitutional right to property protection) to claim compensation for any deprivation of its legally recognized rights. When a slum dweller's informally occupied home is demolished by the municipal authority to make way for an infrastructure project, a real estate development, or a beautification scheme, the constitutional right to property provides her with essentially no protection, because she has no formally recognized property right to protect.

The courts have developed a contradictory jurisprudence on slum demolition and the rights of informal settlers. On one hand, the right to shelter has been read into Article 21 as part of the right to life: the Supreme Court has held in multiple cases that the state cannot arbitrarily evict persons from their homes without providing alternative accommodation, that the right to livelihood (which requires a home from which to access work) is protected under Article 21, and that forced eviction without due process violates constitutional guarantees. On the other hand, courts have also issued orders requiring demolition of unauthorized structures, have held that encroachments on public land cannot be protected as permanent rights, and have been reluctant

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to grant permanent legal recognition to informal settlements because to do so would be seen as rewarding unauthorized occupation.

The result is a jurisprudence that is neither fish nor fowl: it provides some procedural protections for slum dwellers facing eviction but stops short of the substantive recognition of housing rights that would genuinely protect the urban poor. It requires notice before demolition but not genuinely adequate alternative accommodation. It prevents the most arbitrary exercises of state power but does not challenge the systematic production of informal settlement that flows from the failure of constitutional governance to provide adequate urban housing, employment, and economic opportunity.

Meanwhile, the urban land market in Indian cities has been thoroughly colonized by real estate developers, large corporations, and the politically connected wealthy, whose property rights are protected with full constitutional vigor. The extraordinary land price appreciation in major Indian cities, driven partly by speculation and partly by genuine demand, has made the formal urban land market inaccessible to the poor and much of the middle class, reinforcing the informal settlement pattern that then results in the constitutional vulnerability of the informal settler.

The constitutional architecture has thus produced an urban property regime that is simultaneously failing to protect the informal property claims of the poor and vigorously protecting the formal property rights of the wealthy, in a system where the wealthy's formal rights are partly the product of historical privilege, political connection, and access to the legal system that the poor have always been denied.

1.4 The Goods and Services Tax, Fiscal Federalism, and the Constitutionalization of Economic Centralization

The introduction of the Goods and Services Tax (GST) through the Constitution (One Hundred and First Amendment) Act, 2016 was the most significant reform of India's fiscal constitution since independence. It replaced a complex, multi-layered system of central and state indirect taxes with a unified national goods and services tax administered by a GST Council comprising the Union Finance Minister and the state Finance Ministers.

The GST was justified, largely correctly, as eliminating the cascading effects of multiple indirect taxes, removing barriers to the free movement of goods across state boundaries, and simplifying the compliance burden of businesses. Its economic logic was sound in important respects. But its constitutional consequences deserve careful analysis.

The GST reform required states to surrender their power to levy and collect their own sales taxes, octroi, entry taxes, and numerous other indirect levies, in exchange for a constitutionally guaranteed share of the unified GST revenue determined by the GST Council. This exchange was presented as a modernization of the fiscal constitution, and in narrow revenue-efficiency terms it is defensible. But from the perspective of genuine federalism, it represents a significant further centralization of fiscal power.

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The states' pre-GST power to levy their own indirect taxes, however inefficient in their aggregate, gave state governments a measure of fiscal autonomy. States could calibrate their tax rates to their own revenue needs and policy priorities. They could use their tax powers as instruments of industrial or social policy. They could vary their fiscal position in response to their own economic cycles. After GST, state governments have lost these powers. They are dependent on a share of centrally administered revenue, determined by a council in which the Union Finance Minister, who is also the Council's chairperson, has a decisive role.

The constitutional guarantee of revenue to states under the GST regime was set to expire after five years (2022), after which the compensation mechanism that had protected states from GST-induced revenue shortfalls would lapse. When the COVID pandemic caused a severe collapse in GST revenues in 2020 and 2021, the Union government's initially inadequate response to states' claims for compensation became the source of a major constitutional confrontation between the Centre and opposition-governed states, demonstrating the fragility of the constitutional bargain underlying GST.

The deeper constitutional problem is that the fiscal centralization embodied in GST, combined with the Centre's control over income and corporate taxes, its dominance of public sector finance, and its use of centrally sponsored schemes to direct state spending, has created a fiscal constitution that gives the states formal expenditure responsibilities without the commensurate revenue autonomy to discharge them. This is the constitutional form of "unfunded mandates": a practice widely criticized in comparative federal systems as inconsistent with genuine federal governance.

1.5 The Right to Food, the Right to Work, and the Constitutional Accountability Gap

The right to food and the right to work are among the most fundamental of human needs and are recognized in international human rights instruments as core elements of the right to an adequate standard of living. The Indian Constitution addresses them both, but in the characteristically inadequate way that has been traced throughout this textbook: through non-justiciable Directive Principles that express aspirations without providing enforcement.

Article 39(a) directs the state to ensure that all citizens have an adequate means of livelihood. Article 41 directs the state to make effective provision for the right to work. These provisions have been read, by the Supreme Court, into the justiciable right to life under Article 21, generating a body of case law that acknowledges these rights in principle while providing only limited practical enforcement.

The Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) of 2005 and the National Food Security Act of 2013 represent legislative attempts to give concrete form to these constitutional aspirations. MGNREGA creates a legal right to one hundred days of guaranteed wage employment per year for every rural household that demands it. The National Food Security Act creates a legal right to subsidized food grains for a majority of the population.

These are significant legislative achievements, and they have made real differences to the lives of the rural poor. MGNREGA has provided a meaningful income floor for rural laborers, has

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given rural women unprecedented economic independence, and has contributed to the reduction of distress migration. The food security framework has reduced hunger among its beneficiaries.

But both programs are also subject to systematic implementation failure that reflects the deeper pathologies of the Indian constitutional order. MGNREGA is chronically underfunded, with the central government repeatedly failing to allocate sufficient resources to meet the statutory entitlement, resulting in states rationing work, delaying wage payments, and discouraging demand registration. The digital biometric attendance and payment systems introduced in the name of efficiency have in practice excluded large numbers of genuine claimants, particularly older workers, persons with disabilities, and those in areas without reliable connectivity, from accessing their statutory rights.

The food security system is marked by leakages in the public distribution system that have historically diverted a substantial proportion of subsidized grain away from its intended beneficiaries and into the open market. The introduction of direct benefit transfers and biometric authentication has reduced some of these leakages but has also created new exclusions: genuine beneficiaries who cannot authenticate through biometrics, who cannot access the digital system, or whose identity documents are inadequate are excluded from their constitutional entitlements. In Jharkhand in 2017 and 2018, several people were documented to have died of starvation after being excluded from the public distribution system because their Aadhaar biometric authentication failed.

The constitutional accountability gap at the heart of these failures is the absence of any effective legal remedy. A rural laborer denied MGNREGA work has, in principle, the right to apply for unemployment allowance and the right to approach a grievance redress officer. In practice, these remedies are largely nominal. The individual costs of pursuing a legal claim for denial of one hundred days of minimum wage employment against a state government are wildly disproportionate to the value of the claim. The result is that the right to work created by MGNREGA is, for the poorest and most marginalized workers, effectively unenforceable at the individual level.

This is the constitutional accountability gap in its starkest form: a constitutional commitment to economic rights, translated into legislative entitlements, systematically undermined in implementation, and ultimately unenforceable by the citizens whose lives depend on them.

CHAPTER TWO: THE CORRUPTION COMPLEX AND ITS CONSTITUTIONAL ARCHITECTURE

2.1 Corruption as Constitutional System: Beyond the Individual Bad Actor

The standard discourse on corruption in India treats it as a problem of individual moral failure: dishonest officials taking bribes, unscrupulous politicians siphoning public funds, venal businessmen bribing regulators. This framing is not entirely wrong, but it is profoundly incomplete. It focuses on the symptom while ignoring the constitutional architecture that

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produces, protects, and perpetuates systemic corruption. Understanding corruption in India requires understanding the constitutional structures that make corruption not a deviation from the system but an integral, functional part of it.

The argument here draws on the theoretical tradition of what scholars in political economy call "systemic corruption" or "elite capture": the idea that in certain political and institutional environments, corruption is not an aberration but a stable equilibrium, a self-reinforcing system in which the beneficiaries of corruption have the power to prevent the reforms that would eliminate it. This theory, developed in the work of scholars including James Scott, Robert Klitgaard, Bo Rothstein, and Jan Teorell, has been applied to India by scholars including Devesh Kapur, Milan Vaishnav, Niraja Gopal Jayal, and Pratap Bhanu Mehta.

The argument is not that Indians are uniquely or culturally prone to corruption. It is that the specific institutional configuration of the Indian constitutional order creates unusually powerful incentives and unusually weak constraints on corrupt behavior, and that this configuration is not accidental but reflects, in part, the deliberate or negligent choices of those who designed and have perpetuated the constitutional order.

The key structural features of the constitutional architecture that enable systemic corruption are several.

First, the concentration of discretionary executive power in the hands of elected governments, combined with the weakness of independent regulatory oversight, creates extensive opportunities for the extraction of rents from those who need government permissions, licenses, and approvals. The "License Raj" of the Nehruvian era, which has been substantially dismantled through economic liberalization since 1991 but has by no means disappeared, was a direct product of constitutional choices that concentrated enormous regulatory power in the hands of the executive without adequate institutional checks on how that power was exercised.

Second, the opacity of government decision-making, combined with inadequate laws requiring transparency and disclosure, has historically made it extremely difficult for citizens to identify corrupt transactions even when they occur in plain sight. The Right to Information Act, 2005, which gave citizens a constitutional right (implied in the freedom of speech and expression) to access government documents and information, has been one of the most important democratic reforms of the post-independence era. But the RTI has been systematically undermined: RTI activists have been murdered, threatened, and harassed; the Central Information Commission has been rendered dysfunctional by prolonged vacancies; exemptions from disclosure have been expanded; and the government has proposed and partially implemented changes to the Act that weaken its protections.

Third, the political financing system, which the Constitution has never adequately regulated, creates structural links between business interests and political parties that are the foundation of much systemic corruption. Politicians need money to fight elections, the cost of which has escalated to extraordinary levels: estimates suggest that India's 2019 general election was the most expensive in world history, with expenditure exceeding sixty billion dollars when all forms of spending are counted. This money comes overwhelmingly from business interests, and the

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expectation of political access and favorable policy treatment in return is the transactional logic of the political financing system.

The Supreme Court's February 2024 ruling striking down the electoral bonds scheme as unconstitutional was significant precisely because it forced into the open the scale and nature of corporate political financing. The data subsequently released showed that several major corporations had made large donations to political parties, particularly the BJP, in periods when they were facing regulatory investigations or seeking government contracts or approvals. The pattern was suggestive of a systemic relationship between political financing and regulatory outcomes, even if individual transactions could not be proved to be corrupt in the legal sense.

2.2 The Anti-Corruption Apparatus and Its Captivity

India has an elaborate formal apparatus for the detection, investigation, and prosecution of corruption: the Central Bureau of Investigation for central government corruption, state Anti-Corruption Bureaus for state government corruption, the Central Vigilance Commission for corruption in central government organizations, the Enforcement Directorate for financial crimes and money laundering, and the Lokpal and Lokayuktas established under the Lokpal and Lokayuktas Act, 2013.

The cumulative dysfunction of these institutions is one of the most striking features of the Indian constitutional order. Almost every one of them has been credibly characterized, in institutional assessments, judicial observations, or political analyses, as being more effective as an instrument of political harassment of opponents than as a genuine anti-corruption enforcement mechanism.

The CBI's problems have been documented since the Supreme Court's observation in 2013 that it functioned as a "caged parrot speaking in its master's voice." The CBI operates under the Delhi Special Police Establishment Act, 1946, and is formally supervised by the Department of Personnel and Training in the Ministry of Personnel. Its Director is appointed by a committee on which the Prime Minister, the Chief Justice of India, and the Leader of the Opposition sit, a reform introduced in 2014 to provide some institutional independence. But the Director's security of tenure is limited, the CBI's operational independence from the government that controls its personnel and budget is structurally compromised, and the selective pattern of its investigations, where high-profile cases against opposition politicians receive intensive attention while cases involving members of the ruling party languish, has been a consistent feature of its functioning under multiple governments.

The Enforcement Directorate presents even more serious concerns. The ED operates under the Prevention of Money Laundering Act, 2002, a legislation designed to give investigative agencies powerful tools for dealing with serious financial crime. Under PMLA, the ED can attach property on the mere suspicion of its being proceeds of crime, the burden of proof is effectively reversed (the accused must prove that the attached property is not proceeds of crime), bail is extremely difficult to obtain, and the definition of "scheduled offences" that trigger PMLA jurisdiction has been progressively expanded to cover a wide range of ordinary criminal offenses.

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Opposition politicians across all parties have alleged that the ED is used selectively and politically: that its raids, arrests, and property attachments are timed to precede elections in states where the ruling party faces competition, that they target opposition leaders, journalists, and civil society activists rather than genuine money launderers, and that the reversal of the burden of proof and the restrictions on bail combine to create an instrument of imprisonment-without-conviction that is functionally equivalent to preventive detention. These allegations are not made only by interested parties. They are supported by empirical analysis of the pattern of ED activities, which shows a striking concentration of high-profile cases against individuals politically associated with opposition parties.

The Lokpal, which was supposed to be the institutional response to the anti-corruption movement of 2011-2013, is perhaps the most complete institutional failure of the recent period. Established in 2014, the Lokpal was without a chairperson for more than four years, becoming functional only in 2019. As of 2024, it has received thousands of complaints but has produced virtually no investigations of consequence. The institution that was supposed to be the constitutional guardian against executive corruption has been systematically starved of resources, personnel, and political support, in a pattern that suggests deliberate institutional sabotage by governments that have no interest in an effective accountability mechanism.

2.3 Electoral Corruption and the Financialization of Democracy

The corruption of the electoral process itself is perhaps the most constitutionally fundamental form of corruption in India, because it corrupts the very mechanism through which citizens are supposed to exercise ultimate control over their government.

Indian elections are characterized by the systematic use of money in ways that are constitutionally and legally prohibited but practically routine. The distribution of cash to voters, the provision of alcohol and other goods in exchange for votes, the use of government resources (vehicles, officials, programs) for electoral campaigns, the paid participation of voters in political rallies: these practices are widespread and well-documented, and they systematically favor parties with access to large amounts of money.

The Election Commission of India has constitutional responsibilities for conducting free and fair elections and has used its powers under Articles 324 to enforce the Model Code of Conduct, to seize cash being transported for illegal distribution, and to take action against electoral malpractice. In recent years, the EC has seized astonishing quantities of cash, liquor, and other goods being transported for electoral distribution, suggesting the scale of illegal electoral financing.

But the Election Commission's independence and effectiveness have been compromised in ways that have attracted serious constitutional concern. The appointment process for Election Commissioners was, until 2023, entirely in the hands of the executive: the President appointed them on the advice of the Council of Ministers, which in practice meant on the advice of the Prime Minister, without any independent selection process. This arrangement, which allowed the ruling party to pack the EC with compliant individuals, was challenged before the Supreme Court.

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In Anoop Baranwal v. Union of India (2023), the Supreme Court held that a committee comprising the Prime Minister, the Leader of the Opposition, and the Chief Justice of India should select Election Commissioners, pending legislation by Parliament on the subject. Parliament then enacted the Chief Election Commissioner and Other Election Commissioners (Appointment, Conditions of Service and Term of Office) Act, 2023, which replaced the Chief Justice with a Cabinet Minister in the selection committee, effectively restoring the executive majority in the appointment process. This legislative response to the Supreme Court's ruling was widely criticized as a deliberate circumvention of the constitutional intent of the judgment.

The deeper constitutional problem is that the electoral system, as currently designed and administered, is structurally biased toward incumbents and toward parties with access to large amounts of money. The first-past-the-post electoral system, as noted in earlier parts of this textbook, routinely produces majority governments with minority vote shares. The winner-take-all character of the system creates powerful incentives for the deployment of money, power, and sometimes violence to secure narrow electoral advantages. And the absence of constitutional regulation of party financing means that the parties with the most money have systemic advantages in electoral competition that cannot be addressed by anti-corruption enforcement alone.

2.4 Corruption, Caste, and the Patrimonial State

The relationship between caste and corruption in India is one that is rarely discussed in constitutional terms but is of profound constitutional significance. Corruption in India does not flow only through the channels of money: it also flows through the channels of kinship, community, and caste. The patrimonial logic that governs much of Indian public administration, the logic that public offices and public resources are distributed according to loyalties of kin, caste, and community rather than according to universal standards of need, merit, or right, is a form of corruption that is deeply embedded in the social structure and that the constitutional order has failed to disrupt.

The reservation system, which was designed to ensure the representation of marginalized communities in public employment, has been partially captured by this patrimonial logic. In many states, the implementation of reservation policy has been shaped by the caste calculations of the ruling political party: reservations have been extended, modified, or contested not according to principles of historical disadvantage and underrepresentation but according to the electoral arithmetic of coalition-building. The inclusion of Jat, Patidar, Maratha, and other dominant agricultural communities in OBC reservations has been driven by political considerations rather than by the constitutional criteria of social and educational backwardness, and the Supreme Court has been inconsistent in its scrutiny of these politically motivated expansions.

The deeper problem is that the constitutional framework of formal equality, non-discrimination, and reservation has been unable to dismantle the informal networks of caste-based advantage and disadvantage that structure access to economic opportunity, political power, and social respect. The formal rules of the constitutional order coexist with, and are frequently subverted by, the informal rules of caste social organization. And the institutions of the state, staffed by individuals

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who are themselves embedded in caste social networks, are frequently unable or unwilling to enforce constitutional equality in ways that genuinely threaten the social hierarchies from which those individuals benefit.

CHAPTER THREE: THE NATIONALIST DISTORTION AND THE EROSION OF CONSTITUTIONAL DEMOCRACY

3.1 Populist Constitutionalism: When Democratic Forms Serve Anti-Democratic Ends

Among the most significant developments in comparative constitutional scholarship of the past decade has been the emergence of a substantial literature on "democratic backsliding," "autocratization," and "populist constitutionalism": the processes by which elected governments, using constitutional tools and maintaining formal democratic procedures, progressively dismantle the substantive commitments of the constitutional order. This literature, associated with scholars including Steven Levitsky and Lucan Way, Kim Lane Scheppele, Tom Ginsburg and Aziz Huq, and Milan Svolik, has developed precise conceptual tools for understanding how constitutional democracies can die not through military coups but through the slow suffocation of their democratic substance while their democratic forms remain intact.

India has become one of the most important case studies in this literature, and for good reason. The process of democratic backsliding observable in India since 2014, and in some respects continuing into 2025 and 2026, is a paradigm case of how a constitutional order that remains formally democratic can accommodate the systematic weakening of the institutional, legal, and cultural foundations of democracy.

The theoretical framework of "constitutional retrogression" (Huq and Ginsburg's term) identifies three characteristic pathways through which populist governments erode democratic institutions without formally abolishing them: capturing referees (controlling the institutions that are supposed to provide checks on executive power, such as courts, electoral authorities, and anti-corruption agencies), sidelining opponents (using legal mechanisms, administrative harassment, and economic coercion to disable effective political opposition), and tilting the playing field (using incumbency advantages, control of media, and manipulation of legal frameworks to make electoral competition systematically unfair).

All three pathways are observably present in the Indian case, and all three are facilitated and protected by features of the constitutional architecture that have been analyzed in earlier parts of this textbook. The appointment system for judges, which gives the collegium of senior judges the power to make appointments but in practice involves extensive informal negotiation with the government, has allowed the executive to influence the composition of the judiciary in ways that have produced a bench more deferential to government than its predecessors were during the Indira Gandhi period. The appointment system for regulatory bodies, including the Election Commission, the Central Vigilance Commission, and the Information Commissions, has allowed the ruling party to populate these institutions with individuals whose independence from the government is at best uncertain.

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The constitutional tools used for "sidelining opponents" include the broad criminal legislation of the UAPA and the sedition law (which remained on the statute books until the Bharatiya Nyaya Sanhita renamed the offense in 2023 without substantially changing its scope), the use of income tax raids and ED actions against opposition politicians and their financial supporters, and the management of media licensing and advertising in ways that create financial incentives for supportive coverage and financial disincentives for critical journalism.

The "tilting of the playing field" has been the most subtle and perhaps the most consequential element of the backsliding process. The concentration of government advertising revenue with supportive media outlets has created a media landscape in which large parts of the broadcast and digital media have become vehicles for government messaging rather than independent sources of information. The differential treatment of political gatherings by police, security forces, and local administrations, which have been more permissive toward BJP rallies and more restrictive toward opposition activities in states under BJP governance, represents a structural bias in the administration of public order that tilts electoral competition without formally violating any specific constitutional provision.

3.2 Religious Nationalism and the Constitutional Order: The Hindutva Challenge

The relationship between religious nationalism and the Indian constitutional order is not a simple story of an anti-constitutional ideology attacking a secular constitution from outside. It is the more complicated and more disturbing story of a political project that has learned to use the constitutional order's own tools, its electoral mechanisms, its legislative powers, its executive appointments, and its legal framework for the expression of nationalism, to reshape the constitutional order from within.

Hindutva, as a political ideology, does not openly declare itself to be in conflict with the Indian Constitution. It claims, rather, to represent the authentic cultural and civilizational character of the Indian people, which it defines in terms of Hindu religious tradition. In this claim, it uses a version of cultural nationalism that has deep roots in nineteenth-century European thought and that has been theorized, in the Indian context, since V.D. Savarkar's 1923 text "Hindutva: Who Is a Hindu?" The argument is not that non-Hindu citizens are not citizens but that they are citizens whose full belonging to the national community is contingent on their acceptance of the essentially Hindu character of that community.

This argument is fundamentally incompatible with the constitutional framework of secular equal citizenship, which recognizes no hierarchy of belonging based on religious identity. Article 14's equality before the law, Article 15's prohibition of discrimination on grounds of religion, Article 25's guarantee of freedom of conscience, and the constitutional prohibition of a state religion together constitute a framework within which the state cannot use religious identity as a criterion for differential treatment of citizens.

But the Hindutva political project has found ways of pursuing its civilizational agenda within and through the constitutional framework. The Citizenship Amendment Act of 2019, which creates a religion-based pathway to citizenship for persecuted minorities from three neighboring countries while excluding Muslims, uses the formal mechanism of parliamentary legislation and the

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sovereign power of the state to grant citizenship in a way that its critics argue embeds a constitutional preference for non-Muslim religious identities. The state-sponsored construction and consecration of the Ram temple at Ayodhya, attended by the Prime Minister in his capacity as Prime Minister, in January 2024, used the formal mechanisms of court order and executive action to accomplish what amounts to state participation in Hindu religious institution.

The curriculum changes in schools governed by states with BJP governments, which have progressively moved the teaching of history toward a version that emphasizes Hindu civilizational continuity, reduces the role of Muslim rulers to villains and invaders, and glorifies figures associated with the Hindu nationalist tradition, represent a transformation of the educational apparatus of the state in ways that shape the cultural formation of the next generation's citizens. These changes do not formally violate any specific constitutional provision, but they are deeply inconsistent with the constitutional commitment to secularism as a principle of equal respect for all religious traditions.

The constitutional courts have been insufficiently vigorous in identifying and addressing these incremental departures from constitutional principle. The Supreme Court's handling of the Citizenship Amendment Act challenge, for example, has been characterized by extraordinary delay. The petitions challenging the CAA were filed in 2019 and, as of the time of writing in 2026, have not been fully heard and decided. A court genuinely committed to its constitutional function as the guardian of fundamental rights would have addressed a challenge to legislation that its critics argue embeds religious discrimination into citizenship law with considerably greater urgency.

3.3 Sedition, Free Speech, and the Constitutional Management of Dissent

The constitutional protection of free speech under Article 19(1)(a) has always coexisted uneasily with the statutory framework for the management of dissent inherited from colonial law. The Indian Penal Code of 1860 included Section 124A, the sedition provision, which made it an offense punishable with life imprisonment to bring or attempt to bring the government into "hatred or contempt" or to "excite or attempt to excite disaffection towards the Government." This provision was used by the British colonial government extensively against Indian nationalists, including Bal Gangadhar Tilak and Mahatma Gandhi, who famously described it as "the prince among the political sections of the Indian Penal Code designed to suppress the liberty of the citizen."

That the Indian Penal Code of the independent Indian republic retained this section, enacted by colonial rulers to suppress Indian independence activists, is one of the more revealing examples of the colonial continuity in the constitutional order. Section 124A was not used during the Congress governments primarily because the ruling party and the state were practically identical for much of this period, but it was used against communist activists, against trade union organizers, against dissidents in troubled border regions, and against journalists who offended state power.

The misuse of sedition law has escalated dramatically in the post-2014 period, with a sharp increase in sedition cases against journalists, academics, students, and activists who have

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criticized government policy or the Prime Minister's person. The cases brought under Section 124A have often been spectacular in their abuse of the provision: farmers' leaders charged with sedition for participating in agricultural protests, student leaders charged with sedition for speeches at university events, cartoonists charged with sedition for satirical drawings of politicians.

The Supreme Court, in a rare instance of willingness to confront executive power on a freedom of speech question, put Section 124A in abeyance in May 2022, holding in S.G. Vombatkere v. Union of India that the provision needed to be reconsidered in light of contemporary constitutional standards and directing the government to review it. The government subsequently renamed and modified the sedition provision in the Bharatiya Nyaya Sanhita, which came into force in 2024, but critics have argued that the new provision, under Section 152, retains the essential character of the colonial original and continues to threaten legitimate criticism of the state.

The deeper constitutional problem is that the management of dissent through criminal law in India operates across a network of provisions that extends well beyond any single section of the penal code. The UAPA, as discussed in earlier parts, the offenses of "waging war against the state" under Section 121, the provisions criminalizing "promoting enmity between groups" under Section 153A, the broad IT Act provisions regarding online speech, and the newly enacted laws on cybercrime together constitute a regulatory framework for speech that is capable of being used against any sustained criticism of state power.

This regulatory framework is the constitutional infrastructure of political management: the mechanism by which the state can impose significant costs on those who speak inconvenient truths, without formally abolishing the constitutional guarantee of free speech. It is, in the language of the democratic backsliding literature, one of the primary tools for "sidelining opponents" within a formally constitutional framework.

3.4 The Surveillance State and the Disappearing Right to Privacy

The Supreme Court's landmark judgment in K.S. Puttaswamy v. Union of India (2017) established the right to privacy as a fundamental right protected under Article 21 of the Constitution. The judgment, delivered by a nine-judge bench unanimously, is a significant constitutional achievement that recognized what constitutional jurisprudence in other democratic systems had long established: that the ability to control information about oneself, to make autonomous choices about one's life without undue state intrusion, and to communicate privately are essential dimensions of human dignity and liberty.

But the constitutional recognition of privacy as a fundamental right has been followed by an expansion, rather than a contraction, of state surveillance capabilities that poses serious challenges to the practical realization of that right. The Pegasus spyware controversy of 2021, in which credible reporting indicated that Indian government agencies had used Israeli surveillance technology to hack into the phones of at least 300 journalists, lawyers, activists, judges, and opposition politicians, revealed the extent of targeted surveillance that was being conducted by

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the state. The Supreme Court established a technical committee to investigate these allegations, but the committee's report was not made public and the investigation produced no accountability.

The expanding infrastructure of digital surveillance includes: Project NATGRID, which links databases of multiple government agencies to enable comprehensive surveillance; the Central Monitoring System (CMS), which provides real-time interception capabilities for communications; the CCTNS (Crime and Criminal Tracking Network and Systems), which links police stations nationally; the extensive CCTV surveillance networks deployed in major cities and public spaces; and the Aadhaar biometric identity system, which links a single biometric identifier to a citizen's government services, financial transactions, and communications.

The legal framework governing this surveillance infrastructure is deeply inadequate from a constitutional perspective. The Telegraph Act, 1885 and the Information Technology Act, 2000 authorize interception of communications with executive authorization, without any requirement of judicial approval in most cases. The orders authorizing interception do not require specification of the target's identity or the particular communications to be intercepted. There is no mandatory disclosure to the surveillance target, no independent oversight body, and no effective legal remedy for unlawful surveillance. This is a surveillance regime that is incompatible with the constitutional right to privacy as elaborated in the Puttaswamy judgment, and yet it has continued to operate and expand.

The Digital Personal Data Protection Act, 2023, which was supposed to provide a legal framework for data protection in India, has been widely criticized by privacy advocates and civil society organizations for its inadequate protections against state data collection and its broad exemptions for government agencies from the data protection obligations imposed on private actors. The law represents a constitutional moment of missed opportunity: the legislature had the chance to give legal substance to the Puttaswamy privacy right and instead produced a statute that protects citizens' data from private sector entities while leaving state surveillance largely unconstrained.

CHAPTER FOUR: THE VICTIMIZATION OF THE PEOPLE AND THE SYSTEMATIC INVERSION OF CONSTITUTIONAL PURPOSE

4.1 How the Constitutional Order Victimizes Those It Claims to Protect

The most damning indictment of the Indian constitutional order is not that it has failed to achieve its ambitious aspirations perfectly. Every constitutional order fails to achieve its aspirations perfectly. The indictment is that it has frequently operated in a manner that is the systematic inversion of its stated purpose: that the institutions established to protect citizens have become the primary agents of their oppression, that the laws enacted to guarantee rights have become the instruments of their denial, and that the resources accumulated in the name of public welfare have been systematically diverted into private enrichment.

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This inversion of constitutional purpose is most visible in four domains: policing, land acquisition, the criminal justice system, and the delivery of public services. Each of these domains reveals a constitutional order in which the citizen is primarily positioned not as the sovereign whose interests the state serves but as a subject whose compliance the state enforces, whose resources the state extracts, and whose claims the state resists.

The police, the institution of the state most directly encountered by ordinary citizens in their daily lives, has been discussed in earlier parts of this textbook in terms of its colonial organizational DNA. Here the focus is on the specific ways in which the constitutional framework has enabled and protected police misconduct at the expense of the citizens who are its victims.

The constitutional protection of personal liberty under Article 21 and Articles 20-22 is formally extensive. The right against self-incrimination under Article 20(3), the prohibition of double jeopardy, the right to be produced before a magistrate within twenty-four hours of arrest under Article 22(2), the right to consult and be defended by a lawyer of one's choice under Article 22(1), these are real constitutional guarantees. But their practical enforcement depends entirely on the willingness of the legal system to take seriously complaints against the police, a willingness that is systematically constrained by the intimate institutional relationship between the police and the prosecution, between the prosecution and the judiciary in subordinate courts, and between all of these institutions and the social hierarchies of caste and class that determine who is treated as a credible complainant and who is treated as a suspect.

The number of persons who die in police custody in India is, by any international comparison, extraordinary. The National Human Rights Commission data for recent years consistently shows several hundred custodial deaths annually, with many more likely unreported. Custodial torture, which the Supreme Court has unambiguously characterized as a constitutional violation under Article 21, is a routine instrument of investigation in most police stations in India. The D.K. Basu guidelines, issued by the Supreme Court in 1996 to regulate the conditions and procedures of arrest and detention, are routinely violated without consequence. No systematic implementation mechanism exists, no independent body monitors compliance, and the victims of custodial violence are overwhelmingly from social backgrounds that make effective legal redress practically impossible for them.

4.2 Land Acquisition and the Constitution of Dispossession

The Land Acquisition Act, 1894 was one of the most potent instruments of colonial dispossession in British India, giving the colonial state essentially unlimited power to take any private land for "public purpose" on payment of compensation determined by the state rather than by the market. The Nehru government retained this legislation and used it extensively for the construction of the Nehruvian developmental state: large dams, steel plants, defense installations, and public sector industrial complexes were built on land acquired under the 1894 Act. The human cost was enormous.

Estimates of the number of people displaced by development-related land acquisition and reservoir submergence since independence range from 40 million to 60 million people. The

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overwhelming majority of these displaced persons were from the poorest and most marginalized communities: dalits, adivasis, and small farmers who lacked the political connections and legal capacity to resist acquisition. The official displacement and rehabilitation processes have been, in the vast majority of cases, entirely inadequate: displaced persons received minimal compensation, were not provided adequate alternative land or housing, were not rehabilitated in viable communities, and were frequently left in conditions worse than those from which they had been displaced.

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, which replaced the 1894 Act, was the result of sustained civil society advocacy and represented a significant improvement in the legal framework. It required social impact assessment before acquisition, consent of affected families for private sector and public-private partnership projects, significantly enhanced compensation, and more comprehensive rehabilitation entitlements.

But the 2013 Act has been systematically eroded since its enactment. The central government proposed amendments in 2015 that would have removed the consent requirement and social impact assessment obligation for five categories of projects, provoking a major political controversy. When these amendments could not pass the Rajya Sabha, several BJP-governed states enacted their own amendments to state land acquisition rules that achieved similar effects. And the administration of land acquisition under both the old and new frameworks has been characterized by the same patterns of inadequate compensation, inadequate rehabilitation, and official insensitivity to the human consequences of displacement.

The constitutional dimension of this failure is acute. The right to livelihood, which the Supreme Court has held to be implicit in the right to life under Article 21, is directly violated when displacement destroys the agricultural land or forest resources on which a person's livelihood depends, without adequate alternative provision. The right to equality is violated when the costs of development are borne disproportionately by the poorest and most marginalized communities while its benefits flow predominantly to the better-off. The right against arbitrary deprivation of property under Article 300A is violated when compensation is inadequate by any reasonable standard.

And yet the constitutional courts have generally been reluctant to scrutinize land acquisition decisions with sufficient rigor to provide genuine protection to displaced persons. The courts have frequently deferred to the government's characterization of a "public purpose," allowed procedural violations to be cured after the fact, and accepted inadequate compensation assessments that bear no relationship to the actual impact of displacement on the affected families.

4.3 The Criminal Justice System as Instrument of Control

The criminal justice system of India, as currently constituted, functions less as an instrument of justice than as an instrument of social control and, at its most dysfunctional, as an instrument of victimization of the poor. This is not a novel observation: it has been made by multiple official committees, including the Law Commission, the Malimath Committee on Criminal Justice

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Reforms, the Madhav Menon Committee, and, most recently, by the committees that preceded the enactment of the new criminal codes.

The data on the Indian criminal justice system are consistently alarming from a constitutional perspective. The undertrial prisoner population, persons who are in custody awaiting trial and who have not been convicted of any offense, constitutes approximately 76 percent of India's prison population as of 2023. This means that the vast majority of persons in Indian prisons have not been convicted of any crime. They are there because they cannot afford bail, because their cases have not come to trial, or because the legal system cannot process their cases within a constitutionally adequate timeframe.

The profile of the undertrial population is deeply revealing. It is overwhelmingly poor. It is disproportionately from scheduled caste and scheduled tribe backgrounds. It is concentrated in young men from rural areas and urban informal settlements. It is characterized by high rates of illiteracy, by lack of legal representation, and by profound vulnerability to the pressures of investigation and prosecution. Many undertrials, particularly those accused of minor offenses, have already served more time in custody than the maximum sentence for the offense they are accused of committing.

The constitutional right to speedy trial, which the Supreme Court has derived from Article 21, is systematically violated throughout the criminal justice system. The average time from arrest to acquittal or conviction in a criminal case in India is measured not in months but in years, and for serious offenses often in decades. There are documented cases of persons who have spent fifteen, twenty, or more years in prison awaiting trial on charges of which they were ultimately acquitted. The constitutional system that produced this outcome is one in which the human cost of procedural failure falls entirely on the accused and the state bears no meaningful consequence for its failure to bring cases to trial within a constitutionally adequate time.

The Bharatiya Nyaya Sanhita, the Bharatiya Nagarik Suraksha Sanhita, and the Bharatiya Sakshya Adhiniyam, the new criminal codes enacted in 2023, were presented by the government as a fundamental transformation of the colonial criminal justice framework. The renaming of the codes (from the Indian Penal Code, Code of Criminal Procedure, and Indian Evidence Act to their new Sanskrit-derived names) was symbolic of the political project of decolonizing the legal nomenclature. But the substantive content of the new codes has been widely criticized by criminal lawyers, civil liberties organizations, and constitutional scholars as being more retrogressive than transformative: retaining and in some respects expanding police powers, preserving the sedition-like offenses under new names, and not addressing the fundamental structural problems of undertrial detention, police accountability, and access to justice that characterize the system's victimization of the poor.

4.4 Public Services, Corruption, and the Everyday Victimization of the Citizen

For the ordinary Indian citizen, the experience of the constitutional state is primarily the experience of public services: schools, hospitals, roads, water supply, electricity, agricultural extension, social welfare programs, civil registration of births and deaths, and the bureaucratic processes through which citizens access their legal entitlements. And in each of these domains,

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the experience is frequently one of victimization: of having to pay informal fees for services that are legally free, of encountering indifference or active hostility from officials, of having rights denied because of caste identity, because of inability to produce the right documents, or because of the absence of the right social connections.

The term "everyday corruption" refers to the small-scale, quotidian corrupt transactions that characterize the interaction between ordinary citizens and front-line public servants: the bribe paid to a police officer to file an FIR, to a revenue official to process a land record, to a health worker to obtain a hospital bed, to a schoolteacher to ensure that a child is not discriminated against, to a municipal officer to ensure that a property registration is processed. These transactions are individually small but in aggregate enormous: estimates of the annual value of everyday corruption in India suggest it runs to tens of thousands of crore rupees, extracted primarily from those least able to pay.

The constitutional framework has no effective mechanism for addressing everyday corruption. The right to government services without payment of informal fees is not explicitly guaranteed by the Constitution and has been only partially operationalized through administrative mechanisms such as citizens' charters, public grievance portals, and social audits. The right to information under the RTI Act is a powerful tool against systemic corruption but is too complex and too slow to address the immediate victimization of the citizen who needs a service and is being asked for a bribe to receive it.

The most vulnerable citizens, those with the fewest social connections, the least education, the lowest social status, face the heaviest burden of everyday corruption because they have the fewest alternative channels for accessing services and the fewest means of resisting demands. The dalit widow who needs to register her husband's death, the adivasi farmer who needs to have his land records updated, the migrant laborer who needs to register his employer's EPFO contributions: these citizens encounter a bureaucratic system in which their formal rights are entirely real but their practical access to those rights is contingent on navigating a system of informal payments that the Constitution has been unable to eliminate.

CHAPTER FIVE: POWER DISTRIBUTION, THE FEDERALISM DEFICIT, AND THE MANY INDIAS WITHIN

5.1 The Northeast: Constitutional Marginalization at the Frontier

The northeastern states of India (Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, and Tripura) present, in aggregate, one of the most compelling illustrations of the constitutional order's failure to accommodate India's diversity and to protect its most vulnerable peoples. These states are home to a staggering diversity of ethnic, linguistic, religious, and cultural communities, many of which have lived in these territories for millennia and whose relationship to the Indian constitutional order has been, from the beginning, one of incorporation by conquest, managed alienation, and fitful accommodation.

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The constitutional framework for the northeast is a patchwork of special provisions: the Sixth Schedule for tribal areas in several northeastern states, the Inner Line Permit system (now given partial constitutional protection) that restricts entry of outsiders into certain states, special autonomy arrangements for Mizoram and Nagaland under Articles 371F and 371G, and various peace accords that have been incorporated into constitutional and legal frameworks with varying degrees of effectiveness.

Armed Forces (Special Powers) Act, 1958 (AFSPA) deserves particular attention as one of the most constitutionally controversial pieces of legislation in the Indian statute book. AFSPA, enacted to enable military operations in the northeast in the wake of the Naga insurgency, gives the armed forces virtually unlimited powers in declared "disturbed areas": powers to arrest without warrant, to enter and search premises without warrant, to shoot and kill persons on mere suspicion. Crucially, Section 6 of AFSPA provides that no prosecution, suit, or other legal proceeding shall be instituted against any person who has acted under the Act without the prior sanction of the Central Government.

This provision effectively confers immunity from prosecution on members of the armed forces for actions taken under AFSPA, including killings that might otherwise constitute extrajudicial murder. The Supreme Court, in Extra-Judicial Execution Victim Families Association (EEVFAM) v. Union of India, has held that the immunity provision of AFSPA does not extend to cases where the use of force was excessive or unjustified, and that courts have jurisdiction to examine such cases. But the practical enforcement of accountability for AFSPA violations has been minimal: few prosecutions have succeeded, few victims have received adequate compensation, and the institutional culture of impunity that AFSPA creates has been extraordinarily resistant to constitutional and judicial challenge.

AFSPA, in its essence, is a constitutional contradiction: a law that creates a zone of the Indian territory within which the constitutional protections of Article 21 (right to life) and Article 22 (protection against arbitrary arrest) are effectively suspended for the purposes of military operations. It is the Emergency of Part XVIII reduced to a local and permanent condition: a normalized state of exception that has lasted in parts of the northeast for six decades and that continues, in reduced geographical scope, into 2025 and 2026.

The human cost of this constitutional exceptional regime has been staggering. Thousands of documented cases of extrajudicial killing, disappearance, rape, and torture have been recorded by human rights organizations in the northeast. The Meira Paibis, the women's groups of Manipur who have protested AFSPA for decades, represent one of the most sustained and morally compelling campaigns for constitutional accountability in Indian history. The Manipur violence of 2023, which saw ethnic conflict between Meitei and Kuki communities result in hundreds of deaths and the displacement of tens of thousands, was a catastrophic manifestation of the accumulated failure of constitutional governance in the region.

5.2 Kashmir: The Constitutional Exception Becomes the Constitutional Rule

The constitutional history of Jammu and Kashmir is, in important respects, the constitutional history of India's unresolved relationship with the principle of self-determination, with the

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democratic aspirations of a population whose accession to the Indian Union occurred under contested circumstances, and with the use of constitutional and legal exceptional powers as instruments of political management of a disputed territory.

The abrogation of Article 370 and the restructuring of the state of Jammu and Kashmir into two Union Territories in August 2019, accomplished without the consent of the state legislature and at a time when the state was under President's Rule and its own constitutional processes were suspended, was one of the most constitutionally dramatic events of the post-independence period. The Supreme Court's judgment upholding the abrogation in December 2023, delivered by a Constitution Bench, has been extensively analyzed and extensively criticized.

The Court upheld the abrogation on grounds that the President's proclamation under Article 356 had converted the state into a Union Territory (through the exercise of Parliament's power, sitting as the state legislature under President's Rule), that Article 370 itself contemplated its own modification or abrogation by Presidential order, and that the restructuring was therefore constitutionally valid. It directed that statehood be restored to J&K at the earliest and set a timeline for elections (which were held in 2024, resulting in the formation of a National Conference-led government in the state assembly, now reduced to a state assembly of a Union Territory with a divided constitutional position).

The constitutional criticisms of this outcome are substantial. The use of President's Rule to suspend the state legislature and then use Parliament as a substitute for the state legislature to consent to the state's own downgrading to Union Territory status is, many constitutional scholars argue, a perverse use of constitutional emergency powers that cannot be legitimated merely by establishing its procedural correctness. The analogy that critics draw is illuminating: it is as though a kidnapper is found to have the victim's written consent to the kidnapping, signed while the kidnapper was holding the victim against their will, and the court validates the consent document because it bears the victim's signature.

The broader constitutional concern is about the principle that was established. The abrogation of Article 370 demonstrated that the Central government, using the combination of Article 356 (President's Rule) and Article 3 (Parliament's power to reorganize states and Union Territories), can effectively eliminate any state's special constitutional status and restructure its constitutional position without the genuine consent of its people or their elected representatives. This is a precedent of very considerable reach, potentially applicable to any other state whose political situation is deemed by the Centre to warrant restructuring.

The security apparatus deployed in J&K since August 2019 and continuing into 2025-2026 represents an extraordinary constitutional exceptional regime. Internet shutdowns lasting months, restrictions on political activity, preventive detentions of thousands of political figures and ordinary citizens under the Public Safety Act (a preventive detention law specific to J&K), the presence of hundreds of thousands of security forces, and the almost complete suppression of civil society: these are conditions that represent the suspension of normal constitutional governance in a way that echoes, on a geographically limited scale, the national Emergency of 1975.

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5.3 The Southern States and the Language-Development Contradiction

The constitutional tension between the political aspirations of the southern states and the centralizing political economy of the Indian Union has sharpened significantly in recent years and represents a dimension of the federalism deficit that is frequently underanalyzed in constitutional scholarship.

The southern states of India, Tamil Nadu, Kerala, Karnataka, Andhra Pradesh, and Telangana, have achieved significantly higher levels of human development than the Hindi-speaking "BIMARU" states of the northern Gangetic plain, which have much higher rates of poverty, illiteracy, infant mortality, and fertility. The southern states' development success has been built on higher levels of investment in education and health, greater social mobility, more effective local governance, and more dynamic economic diversification.

But the fiscal constitution of India, which distributes central tax revenues between the Union and the states in part on the basis of population share, is designed in ways that transfer fiscal resources from the more developed to the less developed states. This is, in principle, a defensible redistributive mechanism: richer states subsidizing poorer states through the common pool of central revenues. But the southern states, which collect significant tax revenues precisely because their economies are more productive, argue that the formula systematically penalizes them for their development success while rewarding the north's relative underperformance.

The Fifteenth Finance Commission's terms of reference, which included the year 2011 as the base year for population estimates (rather than 1971, which had been used by earlier Finance Commissions), generated intense political controversy in the southern states. The southern states had successfully controlled their population growth through effective social development policies in the period since 1971, while the northern states had maintained higher fertility rates. Using 2011 population data as the basis for revenue sharing therefore systematically reduced the southern states' share of central revenues as a reward for, rather than at the expense of, their successful social policies.

The language question adds a further dimension. The constitutional pressure toward Hindi as the language of administration at the Union level, combined with the recruitment patterns for Union civil services that have historically favored candidates from Hindi-medium educational backgrounds, creates systematic disadvantages for citizens of the non-Hindi speaking states in accessing Union government employment. The NEET examination controversy in Tamil Nadu, where the state government and major political parties have consistently argued that the national medical entrance examination disadvantages Tamil-medium students relative to those educated in English-medium or Hindi-medium schools that align more closely with the national curriculum, illustrates the practical constitutional consequences of the language-education-employment nexus.

CHAPTER SIX: INDIA'S CONSTITUTIONAL FRAMEWORK AND THE NEIGHBORHOOD CATASTROPHE

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6.1 The Constitutional Roots of Regional Hegemonic Behavior

The argument that India's constitutional framework has contributed to a pattern of regional foreign policy behavior that is simultaneously ineffective, counterproductive, and ethically troubling is one that requires careful development. Constitutional frameworks do not mechanically determine foreign policy: choices of foreign policy are made by governments, influenced by domestic politics, shaped by strategic calculations, and constrained by material capabilities. But constitutional frameworks do create the institutional environment within which foreign policy is made, and constitutional values, or the absence of adequate constitutional reflection on foreign policy, shape the culture of foreign policy decision-making.

The Indian Constitution's approach to foreign policy, as analyzed in earlier parts, is characterized by democratic deficit: the concentration of foreign policy decision-making in the executive without adequate parliamentary scrutiny, without constitutional requirements of transparency, and without effective mechanisms for holding foreign policy decision-makers accountable for the consequences of their choices.

This democratic deficit has had specific consequences for India's regional relationships. First, it has allowed foreign policy decisions with significant human consequences, the AFSPA regime in the northeast, the 2015 Nepal blockade, the management of Tamil Sri Lankan refugees, the treatment of Rohingya refugees from Myanmar, to be made without adequate public deliberation about the human rights dimensions of these choices. The Indian executive has consistently prioritized strategic interests and geopolitical calculations over the constitutional values of human dignity and equality in its regional relationships, and the absence of constitutional mechanisms requiring it to justify these trade-offs publicly has allowed this pattern to continue.

Second, the constitutional concentration of power in the executive and, within the executive, in the Prime Minister and the PMO, has produced a foreign policy style that is excessively personalistic, that makes commitments that are difficult to sustain across electoral cycles, and that substitutes summitry and bilateral optics for the patient, institutionally grounded diplomacy that sustainable regional relationships require. The extreme temperature variation in India-Pakistan relations across different government periods, the rapid oscillation in India-China relations from the optimism of "Hindi-Chini bhai bhai" to border confrontation, and the repeated pattern of India-Nepal relations swinging between warmth and grievance reflect in part the absence of a constitutionally grounded, institutionally stable foreign policy framework.

Third, the majoritarian nationalism that has characterized the ruling political ideology since 2014 has had an explicitly communal dimension that has complicated India's relationships with its Muslim-majority neighbors, Pakistan and Bangladesh. When the ruling political party's domestic ideology is explicitly Hindu nationalist, when its politicians make statements about Muslims that would be regarded as hate speech in most democratic constitutional systems, and when the treatment of Muslims within India is a matter of sustained international concern, the ability of the Indian government to present itself as a legitimate partner to Muslim-majority neighbors is significantly compromised. The CAA controversy of 2019, which prompted the Bangladesh government and Prime Minister Sheikh Hasina (subsequently overthrown in August 2024) to

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make public statements of concern about discrimination against Muslims in India, illustrated how domestic constitutional choices have regional foreign policy consequences.

6.2 Pakistan, Kashmir, and the Constitutional Trap

The constitutional treatment of Jammu and Kashmir as an integral part of India, combined with Pakistan's counter-claim, has created a regional security situation that has been locked in a zero-sum adversarial posture for nearly eight decades. The Indian Constitution's claim to sovereignty over the entirety of J&K has made it constitutionally impossible for the Indian government to acknowledge Pakistan's position as having any legal validity, to engage in negotiations that might involve any flexibility on the territorial question, or to offer the people of J&K any constitutional mechanism for expressing their own preferences about their future.

The abrogation of Article 370 in 2019 hardened this constitutional lock-in further. Whatever the strategic or domestic political calculus behind the abrogation, its constitutional consequence was to make the J&K question even less amenable to negotiated resolution: by fully integrating (or attempting to fully integrate) the disputed territory into the constitutional framework of the Indian Union, the Indian government made any future flexibility on the territorial question even more constitutionally difficult.

The costs of this constitutional trap are paid by multiple constituencies. The people of J&K have paid the heaviest cost, living for decades in a region where the security situation has prevented normal political, economic, and social development. The people of Pakistan, particularly those in border regions, have paid a significant cost in insecurity, economic disruption, and the diversion of national resources to military competition. The people of India have paid a significant cost in the diversion of economic resources to a military competition with Pakistan that limits the resources available for health, education, and social welfare, in the political culture of nationalist mobilization around the Pakistan threat that has contributed to the erosion of constitutional liberalism.

There is no easy constitutional solution to the Kashmir problem, and this textbook does not pretend to offer one. But the constitutional framework's absolute rigidity on the question of J&K's status, its lack of any mechanism for flexible political accommodation, and its exclusion of the people of J&K from any genuinely meaningful role in determining their own constitutional future represent a constitutional failure of democratic principle that has had decades of tragic consequences.

6.3 China, Border Management, and the Opacity of National Security Decision-Making

India's relationship with China presents different constitutional questions, but ones that are no less revealing of the constitutional order's structural inadequacies. The 2020 Galwan Valley clash in Ladakh, in which Indian and Chinese soldiers engaged in close-quarters combat resulting in the deaths of twenty Indian soldiers and an unknown number of Chinese soldiers, was the most serious military engagement between the two countries since the 1962 war. Its constitutional management raised questions about transparency, parliamentary accountability, and executive decision-making that have not been adequately answered.

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The Prime Minister's initial public statements about the Galwan clash, which were widely interpreted as suggesting that no Indian territory had been lost and that no Chinese incursion had taken place, were at odds with what subsequent reporting, satellite imagery, and official statements made clear: that Chinese forces had occupied positions in the Galwan Valley that India claimed as its territory, and that disengagement negotiations had resulted in buffer zones that de facto constrained Indian patrol access to previously patrolled areas.

The constitutional question is about democratic accountability for decisions of this magnitude. No parliamentary debate of substance occurred about the Galwan clash or its aftermath. No committee of Parliament scrutinized the government's handling of the border situation. The Standing Committee on External Affairs is not given access to classified intelligence that would enable genuine oversight of border security decisions. The result is that decisions about border management, about military deployments, about the terms of disengagement from Chinese-occupied positions, were all made entirely within the executive without any meaningful democratic deliberation or accountability.

This constitutional opacity in national security decision-making is not unique to the India-China situation. It characterizes India's approach to all questions of military deployment, nuclear strategy, and border management. The constitutional framework provides no mechanisms for meaningful parliamentary oversight of these decisions, and the political culture of national security exceptionalism has made any attempt to assert parliamentary accountability over security decisions easily stigmatizable as anti-national.

6.4 Bangladesh, Migration, and the Constitutional Politics of Belonging

The India-Bangladesh relationship, shaped by the 1971 liberation war in which Indian military intervention was decisive in Bangladesh's emergence as an independent state, has been one of the closest in South Asia. But it has been complicated by persistent disputes over migration, water sharing, and the political consequences of Indian domestic politics for the treatment of Bangladeshis and Bangladeshi-origin communities in India.

The National Register of Citizens exercise in Assam, which concluded in 2019 with approximately 1.9 million people excluded from the final NRC, raised constitutional questions of extraordinary complexity about citizenship, belonging, documentation, and the rights of people who have lived in India for decades without formal documentation of their status. The excluded persons, many of them from poor and marginalized communities whose inability to produce historical documents is a function of poverty, illiteracy, and administrative indifference rather than of any actual absence of Indian citizenship, faced the prospect of being declared foreigners and potentially stateless.

The constitutional framework of citizenship in India, governed by Articles 5 through 11 and the Citizenship Act, 1955, does not adequately address the situation of persons whose de facto Indian belonging is established by decades of residence, social integration, and economic participation but who lack the documentary evidence that the formal citizenship determination process requires. The constitutional right to a nationality, recognized in international human rights instruments, is not explicitly guaranteed in the Indian Constitution. The result is a

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constitutional accountability gap in which millions of people, mostly poor and mostly from minority communities, face the prospect of statelessness as a consequence of administrative failure rather than any genuine alien status.

The Citizenship Amendment Act of 2019, as noted, attempted to provide a path to citizenship for non-Muslim minorities from Bangladesh, Pakistan, and Afghanistan, but explicitly excluded Muslims from this provision. This exclusion has constitutional dimensions that go beyond the discrimination question: it has strained India-Bangladesh relations by signaling that the Indian constitutional framework regards Muslim Bangladeshis as a demographic threat rather than as a population with human rights claims that India, as the dominant regional power, should take seriously.

The August 2024 political revolution in Bangladesh, which ousted Sheikh Hasina's government and brought to power an interim administration, further complicated the regional constitutional picture. The new Bangladeshi government's relationship with India started on a more uncertain footing, and India's management of the transition, including questions about the treatment of the Hindu minority in Bangladesh during the post-revolution period, raised questions about the human rights dimensions of regional political management that the Indian constitutional framework lacks the institutional machinery to process adequately.

CHAPTER SEVEN: THE BRITISH CONSTITUTIONAL LEGACY RECONSIDERED AND THE ONGOING COLONIAL WOUND

7.1 Beyond Decolonization Rhetoric: The Structural Continuity of Colonial Law

The Modi government's program of legal reform, most visibly embodied in the replacement of the IPC, CrPC, and Evidence Act with the new Bharatiya codes, has been framed in the rhetoric of decolonization: eliminating colonial laws and replacing them with instruments that express the authentic legal culture and values of independent India. This rhetoric has a genuine appeal, because the colonial character of the legal system is a real and important constitutional problem.

But the specific reforms undertaken have been widely criticized as decolonization in form rather than in substance: changing the names of laws, adding Sanskrit-derived terminology, renaming sections and chapters, while leaving intact or in some respects worsening the substantive provisions that are the real inheritance of colonialism. The colonial character of the Indian legal system is not primarily in the names of the laws but in their structural features: the powers of arrest and detention without adequate judicial oversight, the presumptions of guilt rather than innocence, the inability of the poor to access legal remedies, the use of criminal law to suppress political opposition, the protection of state power from accountability. None of these structural features has been meaningfully addressed by the new criminal codes.

The genuine decolonization of the legal order would require confronting colonial inheritances at a deeper level. It would require the abolition of preventive detention as a constitutional institution, not just its procedural modification. It would require the fundamental restructuring of

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the police from a force organized for the management of populations into a service organized for the protection of citizens. It would require the elimination of the sedition and public order provisions that the colonial government designed to suppress political dissent and that successive Indian governments have found too convenient to relinquish. It would require the constitutional entrenchment of genuine access to justice at the local level, making the constitutional rights system practically accessible to all citizens rather than only to the educated, the wealthy, and the well-connected.

The colonial DNA of the Indian constitutional order, as traced in Part One of this textbook, is not merely in the specific provisions borrowed from the Government of India Act, 1935. It is in the institutional culture, the administrative habit, the default assumption that the citizen is a subject of the state rather than the state's sovereign. This cultural inheritance is not erased by changing the names of laws or by inserting Sanskrit terms into a code that remains structurally hostile to the citizen it is supposed to serve.

7.2 The British Common Law Heritage: Assets and Liabilities

The Indian legal system's inheritance from British common law is a complex mixture of genuine assets and significant liabilities, and honest constitutional reform requires a careful assessment of both.

On the asset side, the common law tradition has contributed to India a set of legal concepts and doctrinal tools that have been enormously valuable in the development of constitutional jurisprudence. The writ jurisdiction, which allows the Supreme Court and High Courts to issue prerogative writs including habeas corpus, mandamus, certiorari, prohibition, and quo warranto, has been the most important mechanism for the enforcement of fundamental rights against the state. The development of public interest litigation (PIL) in India from the late 1970s, which allowed the courts to hear cases on behalf of those who could not themselves access the legal system, was built on the common law tradition of public interest standing and has been one of the most important constitutional innovations of the post-Emergency period.

The common law's adversarial system, its doctrine of precedent, its commitment to procedural fairness as a component of substantive justice, its development of equity as a mechanism for achieving fair outcomes in cases where strict legal application would produce injustice: these are genuine contributions of the British legal heritage to the Indian constitutional order.

On the liability side, the common law tradition contributed to India a system of legal education, legal culture, and legal practice that is premised on the model of the English barrister rather than on any conception of the lawyer as a public servant or an officer of the constitutional order. This legal culture values technical mastery over social awareness, prizes adversarial skill over problem-solving, and treats legal practice as a business rather than a public service. The result is a legal profession that is technically sophisticated in parts but that is inadequately oriented toward the constitutional commitments of access to justice, equal representation, and social transformation.

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The common law tradition also contributed the doctrine of parliamentary sovereignty, which in its British form means that Parliament can legislate on any subject in any way without constitutional constraint. The Indian Constitution modified this by introducing constitutional supremacy and judicial review, but the parliamentary sovereignty tradition continues to influence the culture of the legislature and the executive: the instinctive resistance to judicial oversight, the tendency to regard constitutional constraints as obstacles to be worked around, and the assumption that a parliamentary majority is sufficient justification for any legislative action.

7.3 The Indian Evidence Act's Epistemic Colonialism

One of the less discussed but most revealing dimensions of the British constitutional legacy is the evidentiary framework inherited from the Indian Evidence Act, 1872, and its successor, the Bharatiya Sakshya Adhiniyam, 2023. The evidentiary framework of the Indian legal system reflects the epistemological assumptions of Victorian positivism, of a legal culture that privileges documentary and testimonial evidence organized according to strict rules of admissibility over the oral traditions, community-based knowledge, and customary documentation systems through which most Indian communities have historically recorded and transmitted information.

This epistemic colonialism has had particularly severe consequences for tribal communities, for illiterate communities, and for rural communities whose land rights, community arrangements, and customary practices are documented in the oral tradition rather than in written instruments. The formal legal system's refusal to recognize oral testimony as sufficient evidence of customary land rights, of traditional forest use practices, or of occupancy without formal title has been one of the primary mechanisms of legal dispossession of precisely those communities whose constitutional protection is supposedly most strongly guaranteed.

The Forest Rights Act, 2006, which requires recognition of the community forest rights of forest-dwelling communities based on "oral evidence" and "community declaration" as well as documentary evidence, represented a deliberate attempt to counteract this epistemic bias. But its implementation by forest departments whose institutional culture remains deeply committed to the Victorian evidentiary paradigm has been consistently resistant to recognizing community-based knowledge and oral evidence as legally sufficient for the recognition of rights.

This is colonialism not just as institutional structure but as epistemological domination: the imposition of a particular way of knowing, a particular relationship between knowledge and authority, that privileges the written, the documented, and the formally administered over the oral, the customary, and the community-governed. A genuinely decolonized constitutional order would require not just the reform of institutional structures but the recognition of alternative epistemological traditions as legitimate sources of constitutional knowledge.

CHAPTER EIGHT: COMPARATIVE PERSPECTIVES AND THE GLOBAL CONSTITUTIONAL DEBATE

8.1 India in Comparative Constitutional Perspective

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The study of comparative constitutional law offers essential perspectives on the Indian constitutional predicament, both because it reveals that many of India's constitutional problems are not unique but shared with other postcolonial democratic systems, and because it shows how other systems have addressed similar problems in ways that might offer models for reform.

The postcolonial constitutional experience has been theorized extensively by scholars including Upendra Baxi, Rajeev Bhargava, Manoj Mate, and, from a comparative perspective, scholars like David Dyzenhaus and Chris Thornhill. The common features of postcolonial constitutional orders, identified across a wide range of cases from South Asia, Africa, and Latin America, include: the inheritance of colonial administrative institutions that remain oriented toward control rather than service, the dominance of constitutional founding by elites who were shaped by the colonial educational system, the gap between constitutional aspiration and institutional capacity, the vulnerability of constitutional democracy to capture by majoritarian or populist forces, and the particular difficulty of translating formal constitutional commitments to equality into substantive social change in societies marked by deep structural inequality.

These features characterize the Indian case with particular intensity, partly because of the scale of India's constitutional ambition, partly because of the depth of its social inequalities, and partly because of the particular character of its colonial inheritance.

The comparison with South Africa is illuminating. South Africa's post-apartheid Constitution of 1996 is widely regarded as one of the most sophisticated constitutions of the modern era, incorporating both civil and political rights and socioeconomic rights (including the right to housing, the right to health care, and the right to basic education) in justiciable form, establishing a comprehensive system of constitutional courts with genuine independence, and creating a Bill of Rights that explicitly recognizes the constitutional obligation to pursue transformative social justice. The South African Constitutional Court has been considerably more willing than the Indian Supreme Court to enforce socioeconomic rights through specific remedial orders requiring the state to take concrete action to deliver on constitutional promises.

South Africa's constitutional experience is not without its own problems: the failure to implement transformative land reform, the corruption and institutional decay of the Zuma era, the continuing racial inequality of the economic order. But the design of the South African Constitution, particularly its justiciable socioeconomic rights and its independent constitutional court with strong remedial powers, represents a genuine attempt to address the kind of structural problems that the Indian Constitution's non-justiciable Directive Principles have consistently failed to address.

The comparison with Brazil offers a different perspective. Brazil's 1988 Constitution, like India's, was drafted in the aftermath of authoritarian rule (military dictatorship in Brazil's case, the Emergency in India's) and sought to entrench democratic values and socioeconomic commitments against future erosion. Brazil's experience of constitutional erosion under Jair Bolsonaro (2019-2022), and the subsequent recovery of constitutional institutions under Luiz Inacio Lula da Silva, offers a case study in both the vulnerabilities and the resilience of constitutional democracy under populist pressure that has direct relevance to the Indian case.

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The Brazilian experience suggests that constitutional resilience depends not only on the formal design of constitutional institutions but on the strength of a broader constitutional culture: on civil society organizations, on a legal profession committed to constitutional values, on an academic community that can articulate and defend constitutional principles in public discourse, and on a sufficient proportion of the electorate for whom constitutional values are real considerations in electoral choice. The relative weakness of these elements of constitutional culture in India, in a context of declining press freedom, increasing pressure on civil society, and a culture of hyper-nationalism that devalues constitutional liberalism, is a serious threat to the long-term resilience of the constitutional order.

8.2 International Human Rights Law and the Constitutional Gap

India's relationship with international human rights law is characterized by a persistent gap between its formal international commitments and its domestic practice. India is a party to most major international human rights treaties, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of the Child, the Convention Against Torture, and the Convention on the Rights of Persons with Disabilities.

These treaties create international legal obligations that are binding on India under international law. But India's dualist approach to international law, under which treaties become domestic law only when incorporated by Parliament, means that these international obligations are not directly enforceable in Indian courts. They can be used as interpretive aids, and the Supreme Court has used them as such in several important decisions, but they do not provide independently justiciable standards against which state conduct can be measured.

The practical consequences of this treaty implementation gap are significant. India has not ratified the Optional Protocol to the Convention Against Torture, which would allow the Committee Against Torture to conduct unannounced visits to places of detention in India, an oversight mechanism that would provide meaningful external scrutiny of the custodial torture practices that remain endemic in Indian policing. India has not fully implemented the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act's obligations in a manner that would genuinely meet the standards of the Convention on the Rights of Persons with Disabilities. The implementation of women's rights under CEDAW has been partial and inconsistent.

The periodic Universal Periodic Review process at the United Nations Human Rights Council has consistently identified significant concerns about India's human rights practice, including the use of sedition and anti-terror laws against journalists and human rights defenders, the situation of minorities, the treatment of Kashmiri civilians, and the conditions of dalits and adivasis. India has typically engaged with these reviews formally while contesting many of the specific findings and has not systematically implemented the recommendations made by the UPR Working Group.

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This pattern of international engagement without substantive compliance is itself a constitutional problem, because it uses the formal apparatus of human rights diplomacy to deflect international accountability while the domestic constitutional framework provides insufficient institutional machinery to enforce the same standards domestically.

8.3 New Constitutional Thinking: Global Developments and Indian Relevance

The global constitutional debate of the past decade has been significantly shaped by the phenomenon of democratic backsliding in countries that were thought to be consolidated democracies, by the theoretical development of "constituent power" theory, by the emergence of "new constitutionalism" as a theoretical framework, and by advances in the theory and practice of constitutional design in countries undertaking new constitution-making exercises.

The experience of Iceland (2010-2013), which conducted a crowdsourced constitutional drafting process using social media to invite citizen participation in the constitutional drafting process, raised genuine questions about whether the democratic deficit of conventional constitution-making processes could be addressed through participatory digital democracy. While the Icelandic experience was ultimately unsuccessful in producing a new constitution (the proposed constitution was never formally adopted), it demonstrated both the possibility and the challenges of genuinely participatory constitutional design.

The Chilean constitutional process of 2021-2023, in which a Constitutional Convention with gender parity and reserved seats for indigenous peoples was elected to draft a new constitution for the country, is perhaps the most significant recent example of an attempt to radically democratize the constitution-making process. The first proposed constitution, rejected in a September 2022 referendum by a substantial majority, was followed by a more conservative second proposal that was also rejected in December 2023. The Chilean experience is both inspiring and cautionary: inspiring because of the genuine attempt to create a truly representative and participatory constitution-making process, cautionary because of the demonstrated difficulty of translating participatory process into a document that can command majority support across a deeply divided society.

For India, these comparative experiences raise questions about what a genuinely democratic constitutional renewal process would look like. India's 1.4 billion people include hundreds of millions who have never been meaningfully included in any national deliberative process. They speak hundreds of languages, practice dozens of religions, live in conditions ranging from extreme poverty to comfortable affluence, and hold political views that span the entire ideological spectrum. A genuinely representative constitutional convention for India would be an exercise of extraordinary logistical complexity and would require institutional innovations that have no precedent in Indian political history.

But the difficulty of the exercise does not diminish its necessity. The argument that constitutional reform must proceed through the existing Parliament, using the existing amendment process, is an argument for allowing those who have most benefited from the existing constitutional order to determine the terms of its reform. It is an argument that systematically excludes from

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constitutional agency precisely the groups whose interests have been most poorly served by the existing constitution.

CHAPTER NINE: THE CASE FOR CONSTITUTIONAL RENEWAL: THEORIES, MODELS, AND THE PATH FORWARD

9.1 The Theoretical Case: Why Amendment Is Not Enough

The distinction between constitutional amendment and constitutional replacement has been debated in constitutional theory since the emergence of modern constitution-making in the late eighteenth century. The American Constitution has been amended twenty-seven times without being replaced. The German Basic Law has been amended dozens of times. The French Constitution of 1958 has been amended many times. Constitutional amendment, when used systematically and thoughtfully, can be a powerful tool for constitutional evolution.

But there are theoretical and empirical arguments for why amendment is an inadequate response to the kind of structural constitutional failure that India is experiencing, and for why something more fundamental, either a new constitution or the equivalent of a complete constitutional reconstruction through comprehensive amendment, is necessary.

The first argument is what scholars call "constitutional lock-in": the idea that constitutions, through their operation over time, produce political interests, institutional configurations, and legal cultures that are self-reinforcing and that are capable of defeating attempts at reform through ordinary amendment processes. The parties that benefit from the current constitutional configuration, the dominant political parties, the major economic interests, the senior judiciary, the administrative class, have both the interest and the capacity to block constitutional amendments that threaten their position. And the amendments that they would permit are likely to be those that benefit them rather than those that would genuinely transform the constitutional order in the interest of the majority.

This constitutional lock-in effect is visible in India in the inability to reform the electoral system, despite broad scholarly consensus that first-past-the-post is particularly ill-suited to India's multi-party, multi-ethnic polity. It is visible in the inability to create a genuinely independent judicial appointments process, despite the manifest dysfunction of the collegium system. It is visible in the inability to reform the anti-defection law in ways that would genuinely strengthen parliamentary accountability to citizens. All of these reforms would require the consent of those who benefit most from the status quo.

The second argument is what theorists of "constituent power" (Sieyès, Schmitt, and more recently Loughlin and Walker) call the distinction between "constituted power" (the power exercised within the constitutional framework by the institutions the constitution creates) and "constituent power" (the founding power that creates the constitution and that cannot, by definition, be fully captured within the constitutional framework). The argument is that genuine constitutional transformation requires an exercise of constituent power, a founding moment in

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which the people, acting outside the existing constitutional framework, create a new constitutional order.

This argument has been deployed in a wide range of constitutional renewal debates, from the post-apartheid South African process to the Latin American "pink tide" constitutions of Bolivia (2009) and Ecuador (2008) to the Chilean processes of the 2020s. Its application to India raises the question of whether the procedural constraints of Article 368 (the constitutional amendment process) are an adequate vehicle for the degree of constitutional transformation that India's situation requires, or whether those constraints are themselves part of the constitutional pathology that needs to be transcended.

The third argument, closely related, is what legal scholars who work in the tradition of critical legal studies call the "constitutive" character of constitutional law: the idea that the existing constitutional framework does not merely regulate a pre-existing social reality but actively constitutes that reality, creating certain kinds of actors, certain kinds of interests, and certain kinds of political possibilities while precluding others. If the existing constitution is constitutively committed to certain social arrangements (centralized power, formal rather than substantive equality, non-justiciable socioeconomic rights, colonial administrative institutions), then reform within the framework of that constitution will always be constrained by its constitutive commitments.

A genuinely transformative constitutional reform would need to change those constitutive commitments: to redesign the constitutional framework in ways that create different kinds of political possibilities, different kinds of institutional actors, and different kinds of social arrangements.

9.2 What a New Constitutional Order Must Address

If the argument for fundamental constitutional reform or replacement is accepted, the question becomes: what must a new constitutional order accomplish that the existing one has failed to deliver?

The first and most fundamental requirement is genuine popular sovereignty. A new constitution must be drafted through a process that is genuinely representative of India's full diversity, not just of its political elite. This means a constitutional convention, not a parliamentary committee, composed of delegates elected by universal suffrage on a basis that ensures the representation of women, of scheduled castes and scheduled tribes, of religious minorities, of regional and linguistic communities, of the rural poor, and of all the other groups whose voices have been systematically absent from the constitutional design process. The process of drafting must be transparent, consultative, and conducted in languages that all citizens can access. The resulting document must be submitted to popular ratification, not merely parliamentary approval.

The second requirement is the constitutionalization of genuinely justiciable socioeconomic rights: the rights to food, housing, water, health care, education, and social security, enforced by independent constitutional tribunals with the remedial power to require specific state action and to monitor compliance. The South African and Colombian models of socioeconomic rights

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adjudication, which have developed sophisticated doctrines of "minimum core" obligations and "progressive realization" within resource constraints, provide valuable templates. The key distinction from the existing Indian Directive Principles is justiciability: the citizen must be able to go to a court or tribunal and obtain an enforceable order when the state fails to deliver on these constitutional commitments.

The third requirement is genuine federalism, with fiscal and administrative decentralization that gives state governments the financial autonomy to discharge their constitutional functions, that eliminates the Centre's ability to use the Governor's office and President's Rule as instruments of political management, and that gives local self-government institutions the resources, powers, and accountability mechanisms they need to function as genuine institutions of democratic governance.

The fourth requirement is a reformed electoral system that replaces first-past-the-post with a mixed or proportional representation system that ensures that electoral outcomes genuinely reflect the distribution of political preferences in the electorate, that eliminates the distortions of the current system, and that makes electoral competition more dependent on ideas and programs than on money and electoral mobilization strategies.

The fifth requirement is a genuinely independent judiciary, appointed through a process that is transparent, merit-based, independent of executive control, and conscious of the need for diversity in the composition of the bench. The appointment process must be governed by clear and publicly known criteria, subject to public scrutiny, and decided by an independent body that includes judicial, parliamentary, and civil society representation but is dominated by none.

The sixth requirement is the constitutionalization of political party regulation: requirements of internal party democracy, transparency in party financing, and accountability of party leadership to party members. Political parties are the institutional infrastructure of democracy and their current constitutional invisibility has allowed them to become instruments of oligarchy and dynasty that are incompatible with the constitutional commitment to popular sovereignty.

The seventh requirement is a completely reformed approach to emergency powers: the elimination of provisions for Presidential Rule over states in their current form, the strict limitation of national emergency powers to genuine external threats with automatic parliamentary scrutiny and short duration without renewal, and the constitutional prohibition of the use of emergency powers to suspend fundamental rights that protect the individual against the state.

The eighth requirement is a constitutional framework for foreign policy that requires parliamentary scrutiny of major foreign policy decisions, that integrates India's international human rights obligations into domestic constitutional law, and that establishes clear constitutional principles governing India's relationships with its neighbors, based on principles of mutual respect, non-interference in internal affairs, and commitment to regional human rights standards.

9.3 The Constitutional Moment: When Change Becomes Possible

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The concept of a "constitutional moment" (associated with the American constitutional scholar Bruce Ackerman) refers to a period of heightened political engagement in which "we the people" are genuinely mobilized around constitutional questions and in which transformative constitutional change becomes politically possible in ways that it is not in ordinary political times. Ackerman identifies the New Deal of the 1930s in the United States as a constitutional moment that transformed the constitutional order without formal amendment. He identifies the civil rights movement of the 1950s and 1960s as another.

In India, the Emergency period of 1975-1977 was a kind of constitutional moment in reverse: a period when the failure of constitutional government was starkly revealed and when, in the subsequent electoral defeat of Indira Gandhi, the Indian people demonstrated a constitutional commitment to democratic values that the formal constitutional provisions had been unable to protect. The anti-corruption movement of 2011-2013, which brought hundreds of thousands of people into the streets around a demand for institutional accountability, was another kind of constitutional moment, one whose energy was ultimately channeled into the very political formation (the BJP under Narendra Modi) that has subsequently been the primary agent of constitutional erosion.

Constitutional moments are not created by scholars or by institutional reformers: they arise from the intersection of political crisis, popular mobilization, and the availability of a credible alternative vision of constitutional order. What scholars and reformers can do is to prepare the intellectual and institutional ground for such a moment: to articulate the critique of the existing constitutional order clearly and compellingly, to develop concrete and detailed proposals for constitutional alternatives, to build the coalitions of interest and conviction that would be required to support constitutional transformation, and to ensure that when the moment arrives, there is a ready framework for constitutional renewal rather than a vacuum that will be filled by whoever is strongest.

This textbook is, among other things, an attempt to contribute to that intellectual preparation.

9.4 The Philosophical Horizon: Constitutional Theory and the Indian Future

The philosophical traditions that are most relevant to the project of Indian constitutional renewal are not those that have dominated the formal constitutional discourse of the past seven decades. The dominant tradition of Indian constitutional jurisprudence has been, as earlier parts of this textbook have argued, a mixture of Westminster parliamentary constitutionalism, American-style fundamental rights adjudication, and Fabian social democracy, all filtered through the particular social consciousness of an educated elite that was shaped by the British colonial educational system.

The philosophical traditions that need to be centered in the project of constitutional renewal are those that have been most systematically marginalized by the existing constitutional order: the Ambedkarite tradition of annihilation of caste as a social revolution, not merely legal reform; the Gandhian tradition of decentralized self-governance and local democratic accountability; the feminist legal tradition's critique of the public-private divide that has allowed the constitutional order to be indifferent to the gendered forms of violence and domination that structure women's

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lives; the adivasi jurisprudence of land, forest, and community rights that operates on a different understanding of the relationship between human beings, their communities, and the natural world than anything in the Westminster or American constitutional tradition; and the human rights tradition that understands the human being not as an isolated individual bearer of negative rights against the state but as a social being whose dignity, freedom, and equality depend on the existence of social and material conditions that the state has an affirmative constitutional obligation to provide and protect.

The synthesis of these traditions into a coherent constitutional philosophy is an enormous intellectual challenge. These traditions are not always consistent with each other. Ambedkar's constitutionalism was deeply committed to individual rights against the community, while Gandhi's was oriented toward community self-governance at the expense of individual exit rights. The feminist tradition's critique of the family as a site of domination is in tension with traditions, including some indigenous traditions, that see the family and community as the primary site of care and solidarity. The rights of individual members of minority communities sometimes conflict with the collective rights of those communities to maintain their distinctive cultural practices.

But the existence of these tensions does not mean that synthesis is impossible. It means that the synthesis must be genuinely dialectical: it must hold the tensions between traditions in productive relation, must refuse to resolve them too quickly or too cleanly, and must build constitutional institutions that are capable of managing ongoing disagreement about fundamental values rather than foreclosing that disagreement through premature resolution.

The most fundamental philosophical point is that a new Indian constitution must be genuinely pluralistic: not pluralistic in the thin sense of permitting a range of privately held views while the public constitutional framework remains committed to a single set of values, but pluralistic in the thicker sense of recognizing that the constitutional order itself must be constructed from the intersection of multiple traditions, that no single tradition has all the answers, and that the legitimacy of the constitutional order depends on its genuine openness to the diversity of human experience and aspiration that constitutes the Indian people.

9.5 Jurisprudential Implications: The Transformation of Constitutional Interpretation

Any fundamental constitutional reform will have profound implications for the practice of constitutional interpretation, and these implications deserve careful theoretical attention.

The dominant mode of constitutional interpretation in India has been what might be called "purposive textualism": the courts begin with the constitutional text, interpret it in light of its evident purpose, and expand its meaning through the technique of reading implied rights into explicit textual provisions. This approach has produced the expansive jurisprudence of Article 21 that has been discussed at various points in this textbook: the reading of rights to livelihood, to shelter, to health, to privacy, to a clean environment, into the textual core of the right to life.

A reformed constitutional order, with justiciable socioeconomic rights explicitly incorporated, would require a different approach to interpretation. The courts would need to develop doctrines

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for assessing compliance with socioeconomic rights obligations: doctrines of "minimum core" (identifying the irreducible minimum content of each right below which state action cannot be justified by resource constraints), of "progressive realization" (assessing whether the state is making reasonable progress toward the full realization of the right within its available resources), of "non-retrogression" (prohibiting the state from taking measures that reduce the level of protection already achieved), and of "non-discrimination" (requiring that the state's efforts to realize socioeconomic rights do not systematically exclude the most marginalized groups).

These doctrines have been developed in international human rights law through the work of the United Nations Committee on Economic, Social and Cultural Rights, and in domestic constitutional law through the South African, Colombian, and Indian (in more limited form) jurisprudence. Their full elaboration in an Indian context of genuinely justiciable socioeconomic rights would represent a transformation of constitutional adjudication as significant as the basic structure doctrine.

The interpretation of a new constitution's federal provisions would also require doctrinal development beyond what the existing jurisprudence provides. Genuine federalism requires doctrines that protect state autonomy from central encroachment, that give states the fiscal authority to discharge their constitutional functions, that limit the use of conditional grants as instruments of central control, and that respect the diversity of state policy choices rather than imposing a national uniformity that is inappropriate to India's regional diversity.

9.6 The Role of Civil Society and the Constitution of Participation

A new constitutional order for India must find ways of institutionalizing the role of civil society in constitutional governance that go beyond what the existing framework provides. The existing constitution's approach to civil society is essentially negative: it protects freedom of association, freedom of speech, and freedom of assembly, which create the conditions for civil society to form and to act, but it does not give civil society any formal constitutional role in governance.

The experience of the past three decades has demonstrated both the extraordinary vitality of Indian civil society and the vulnerability of that vitality to state suppression. The Right to Information movement, the campaign against domestic violence, the anti-corruption movement, the disability rights movement, the forest rights movement, the LGBTQ+ rights movement: these have been among the most significant contributions to constitutional development in the post-Emergency period, and they have operated primarily through the medium of civil society organizations, advocacy groups, litigation collectives, and public interest legal work.

But civil society organizations in India are increasingly subject to state pressure through the Foreign Contribution (Regulation) Act (FCRA), which regulates the receipt of foreign funds by civil society organizations and which has been used to effectively defund major human rights organizations, environmental groups, and advocacy organizations whose work has been critical of government policy. The amendments to FCRA in 2020 that tightened the restrictions on foreign funding and centralized its administration were widely described by civil society organizations as an attempt to cripple organizations whose constitutional advocacy was inconvenient to the government.

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A new constitutional order should consider whether civil society organizations that perform constitutional functions (monitoring government performance, providing legal aid, engaging in public interest litigation, conducting social audits, and representing marginalized communities in policy processes) should have constitutional recognition and protection from the kind of administrative harassment that the FCRA regime has enabled.

The model of "constitutional pluralism" developed in European constitutional theory, which recognizes multiple sites of constitutional authority beyond the national constitution (including supranational, sub-national, and civil society-based sites), offers one theoretical framework for thinking about how to constitutionalize the role of civil society. In the Indian context, this might translate into constitutional provisions that explicitly recognize and protect civil society organizations that perform public functions, that guarantee their access to government information, that protect their right to engage in constitutional advocacy, and that insulate them from retaliatory administrative action for their advocacy.

CHAPTER TEN: SYNTHESIS AND THE HORIZON OF CONSTITUTIONAL HOPE

10.1 The Weight of History and the Promise of Reform

Any honest assessment of the Indian constitutional order must acknowledge the extraordinary weight of the history that has produced it and that has shaped its development over seven decades. The framers of the Constitution worked under conditions of catastrophic crisis: the trauma of partition, the challenge of national integration, the burden of mass poverty and illiteracy, and the task of building a national consciousness from an extraordinary diversity of language, culture, religion, and caste. That they produced a document of any coherence and ambition under these conditions is itself a remarkable achievement.

The history of the Constitution's operation, whatever its failures, also includes real achievements. The consolidation of democratic governance through regular elections, peaceful transfers of power, and a genuinely competitive multi-party system, however imperfect in its details, represents a democratic achievement that many countries with similar starting conditions have not matched. The development of a constitutional jurisprudence that has, at its best, expanded rights and protected vulnerable groups in ways the framers could not have anticipated represents genuine creative constitutional accomplishment. The reservation system, for all its limitations, has created pathways of social mobility for millions of people from historically marginalized communities who would have had no such pathways without it. The legal services authority system, for all its inadequacy, has made some legal assistance available to millions of poor people who would otherwise have had none.

These achievements do not cancel the failures. But they are real, and they provide the foundation on which a renewed constitutional order can be built. Constitutional reform is not constitutional destruction: the right approach is not to reject everything in the existing constitutional order and start from nothing, but to identify what is worth preserving, what needs fundamental

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transformation, and what needs to be added from the categories of constitutional aspiration that have not yet been realized.

10.2 The Intellectual Tradition of Reform and Its Practitioners

The argument for constitutional reform in India is not new and is not the invention of this textbook. It has a distinguished intellectual lineage that includes some of the most rigorous legal scholars, political scientists, and social thinkers that India has produced.

Ambedkar himself, who drafted the Constitution, was among its first critics. His speech to the Constituent Assembly on the eve of the Constitution's adoption, in which he warned that India was entering a world of contradictions: it would have political democracy without social democracy, it would have equality in political life and inequality in social and economic life, and these contradictions would, if not resolved, "blow up the constitution", is one of the most prophetic constitutional utterances in Indian history. Ambedkar was not satisfied with the Constitution he drafted. He believed it was the best he could achieve given the balance of forces in the Constituent Assembly, but he did not believe it was adequate to the social revolution that India needed.

Granville Austin, the American scholar who produced the most comprehensive account of the making of the Indian Constitution, described it as "first and foremost a social document" but acknowledged the tension between its social aspirations and its institutional design. Upendra Baxi, perhaps the most original and prolific of contemporary Indian constitutional theorists, has consistently argued for what he calls "a jurisprudence of insurgent cosmopolitanism": a constitutional theory that takes the aspirations of the most marginalized seriously as the organizing principle of constitutional interpretation and institutional design.

Pratap Bhanu Mehta has written with characteristic precision about the institutional failures of the constitutional order and the cultural conditions required for its renewal. Rajeev Bhargava has developed the most sophisticated account of Indian secularism as a constitutional principle and its relationship to the management of religious diversity. Ashutosh Varshney has analyzed the constitutional conditions of communal violence and democratic failure. Niraja Gopal Jayal has examined the complex relationship between citizenship, identity, and constitutional belonging in ways that illuminate the deepest tensions of the constitutional order.

This intellectual tradition of constitutional criticism is itself a resource for constitutional renewal. It demonstrates that the problems of the Indian constitutional order are understood, that they have been analyzed with rigor and depth, and that there is a body of constitutional scholarship available to inform a genuine process of constitutional transformation.

10.3 The Students and Citizens of the Next Constitutional Order

This textbook is addressed to multiple audiences: to law students engaged in the formal study of constitutional law, to political scientists studying Indian democratic institutions, to journalists and policy analysts concerned with constitutional governance, to activists working on specific

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aspects of the constitutional reform agenda, and to citizens generally who live within the constitutional order and whose lives are shaped by its operations and its failures.

Each of these audiences has a role in the process of constitutional renewal. Law students who understand the structural failures of the existing constitutional order will become lawyers and judges who are more equipped to use constitutional tools to their maximum protective potential and more committed to the reforms that are needed. Political scientists who understand the institutional dynamics of constitutional erosion are better positioned to identify warning signs and to advocate for the institutional safeguards that can prevent or slow that erosion. Journalists who understand the constitutional dimensions of current political developments are better equipped to report on them in ways that serve the democratic accountability function of a free press. Activists who understand the constitutional framework of the problems they address are better equipped to use legal advocacy alongside other forms of organizing. And citizens who understand their constitutional rights and the systemic failures of the institutions that are supposed to protect those rights are better equipped to demand accountability and to participate in the democratic processes that ultimately determine the character of the constitutional order.

The Indian constitutional order will not be transformed by scholars writing textbooks. It will be transformed, if it is transformed, by the organized political will of millions of citizens who demand something better than what they have been given. This textbook's modest ambition is to contribute to the intellectual equipment that makes that organized demand more informed, more coherent, and more constitutionally grounded.

The Preamble of the Indian Constitution speaks of "We, the People of India." Seven decades of constitutional experience have revealed the gap between that aspiration and the reality of who actually exercises constitutional power in India, who is actually protected by constitutional institutions, and who is actually victimized by constitutional governance. The project of constitutional renewal is the project of closing that gap: of making "We, the People" not merely a rhetorical formula but a constitutional reality.

That project is not completed by any single act of constitutional drafting or any single moment of constitutional founding. It is the ongoing work of democratic self-governance: the continuous, contested, never-fully-resolved process by which a people deliberates about the terms of their collective life and holds their institutions accountable to those terms. The Constitution of India, whatever its failures, has created the institutional framework within which this work goes on: the elections, the courts, the Parliament, the free press (however beleaguered), the civil society organizations, the legal profession, the universities. These are imperfect instruments of democratic self-governance, but they are real ones, and the work of constitutional renewal is the work of making them more genuine, more accessible, more accountable, and more truly representative of the full range of Indian human experience.

10.4 A Note on the Concept of Constitutional Legitimacy and Its Renewal

Constitutional legitimacy, as political philosophers from John Rawls to Jurgen Habermas have argued, is not a property that a constitution either has or lacks once and for all. It is a dynamic quality that must be continuously renewed through the processes of democratic deliberation,

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institutional accountability, and the genuine responsiveness of constitutional governance to the claims of citizens.

The Indian Constitution's legitimacy has been eroding. This erosion is visible in the declining trust in constitutional institutions that survey data consistently reveals, in the increasing use of extra-constitutional means (including violence) to pursue political objectives, in the withdrawal of civil society organizations from institutional engagement toward a more adversarial posture toward the state, and in the emergence of political movements that openly question the legitimacy of the secular, federal, democratic constitutional framework and propose alternatives based on civilizational nationalism or religious identity.

The renewal of constitutional legitimacy requires two things that are often in tension: the defense of existing constitutional achievements against erosion, and the fundamental reform of the constitutional order's structural failures. The tension between these two imperatives is genuine: the institutions that need to be reformed are also the institutions through which constitutional values must be defended. The constitutional order that needs to be changed is also the constitutional order that provides the framework within which change can occur.

Managing this tension is the central challenge of the constitutional reform project. It requires, above all, a willingness to hold two ideas simultaneously: that the Indian Constitution, despite all its failures, represents a genuine commitment to human dignity, equality, and democratic self-governance that is worth defending, and that the constitutional order that has actually operated under that Constitution has systematically betrayed those commitments in ways that require fundamental structural change rather than merely incremental reform.

This is not a contradiction. It is the constitutional condition of transformative politics: the recognition that inherited institutions are both the instruments and the obstacles of change, that reform requires working with and within the existing constitutional framework while simultaneously articulating and building support for the constitutional future that the existing framework cannot, on its own, deliver.

The Indian Republic is now more than seventy-five years old. It has survived partition, war, famine, natural disaster, communal violence, insurgency, economic failure, and the near-death experience of the Emergency. It has produced a democracy of extraordinary resilience and vitality, a legal system of genuine creative capacity, and a constitutional culture that, despite everything, continues to produce citizens who believe in the values of the Preamble and are willing to fight for them.

These are not small things. They are the foundation on which constitutional renewal must be built. The argument of this textbook is that the foundation is real but that the structure built on it is inadequate, and that the people who live within that structure deserve something better. The Constitution they deserve is one that is genuinely theirs: written in their languages, through their participation, encoding their values, protecting their rights, distributing power in ways that make it genuinely accountable to them, and treating them not as subjects to be managed but as the sovereign people from whom all constitutional authority ultimately derives.

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That constitution does not yet exist. Making it exist is the work of the generation of Indians who are alive today and who will determine what kind of constitutional future their children inherit.

BIBLIOGRAPHIC AND JURISPRUDENTIAL NOTES FOR PART NINE

The theoretical framework of this Part draws extensively on the following bodies of scholarship and jurisprudence.

On economic constitutionalism and land rights: the work of P.S. Appu (Tenancy Reforms in India), the Land Rights Movement documentation of the Ekta Parishad, the Supreme Court jurisprudence in Olga Tellis v. Bombay Municipal Corporation (1985) on the right to livelihood, and the comparative work of Boaventura de Sousa Santos on the social constitutionalism of the Global South.

On systemic corruption: the theoretical framework of Bo Rothstein and Jan Teorell on quality of government, Milan Vaishnav's When Crime Pays on the criminalization of Indian politics, and Devesh Kapur and Milan Vaishnav's Costs of Democracy on political financing.

On democratic backsliding: Levitsky and Ziblatt's How Democracies Die, Huq and Ginsburg's How to Lose a Constitutional Democracy, Kim Lane Scheppele's work on "autocratic legalism," and the V-Dem project's annual Democracy Reports for 2022 through 2025, all of which track India's democratic trajectory.

On constitutional renewal and constituent power: Bruce Ackerman's We the People volumes, Martin Loughlin and Neil Walker's The Paradox of Constitutionalism, and the comparative work of Gabriel Negretto on constitution-making in Latin America.

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On postcolonial constitutionalism: Upendra Baxi's The Future of Human Rights, Rajeev Bhargava's edited volume Secularism and Its Critics, and the emerging literature in what Baxi calls "subaltern constitutionalism."

On the constitutional treatment of the northeast and Kashmir: the reports of the Armed Forces Special Powers Act Technical Committee (2005), the Justice Verma Committee Report (2013), the EEVFAM jurisprudence, and the scholarly work of Sanjib Baruah, Nandita Haksar, and Angana Chatterji.

On comparative federalism: William Riker's Federalism: Origin, Operation, Significance, Akhil Reed Amar's America's Constitution, and the Indian fiscal federalism literature including the Fifteenth Finance Commission's reports and the academic work on GST's federal implications.

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Recent judicial developments cited in this Part include: Association for Democratic Reforms v. Union of India (2024) on electoral bonds, the Supreme Court Advocates-on-Record Association judgment of February 2026 on judicial appointments (noting ongoing legislative and judicial developments through early 2026 that have continued the debate on collegium reform), the EEVFAM supplementary proceedings on AFSPA accountability, and the pending CAA petitions whose resolution remains awaited as of April 2026.

The argument for constitutional renewal draws on and acknowledges the work of the following contemporary Indian scholars whose contributions to the reform debate have been particularly significant: Pratap Bhanu Mehta, Niraja Gopal Jayal, Arvind Datar, N.R. Madhava Menon, Faizan Mustafa, Mrinal Satish, Tarunabh Khaitan, Gautam Bhatia, Suhrith Parthasarathy, Alok Prasanna Kumar, Anand Grover, and the team of the Centre for Law and Policy Research.

The arguments made in this textbook are the author's own. They draw on these scholars' work but do not necessarily represent their views.

End of Part Nine. Part Ten will examine the Constitutional Crisis of Social Justice: Gender, Sexuality, and the Unfinished Feminist Revolution in Indian Constitutionalism.

PART TEN: THE CONSTITUTIONAL CRISIS OF SOCIAL JUSTICE

Gender, Sexuality, Caste Patriarchy, and the Unfinished Feminist Revolution in Indian Constitutionalism

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PREFACE TO PART TEN

This part of the textbook enters territory that is simultaneously the most intimate and the most politically explosive in the entire project of Indian constitutional critique. The constitutional questions addressed in previous parts, the colonial DNA of the constitutional order, the dysfunction of federalism, the concentration of executive power, the decay of parliamentary institutions, the misuse of preventive detention, the democratic deficit of foreign policy, these are questions that operate at the level of institutions, structures, and governmental power. They are profoundly important questions, and the answers to them determine the lives of hundreds of millions of people.

But the questions addressed in this part are different in character. They operate at the level of the body, the bedroom, the kitchen, the marketplace, the place of worship, and the courtroom where a woman sits across a table from the man who violated her and must somehow prove, in a system designed by and for men, that she deserves justice. They operate at the level of the child born into a caste hierarchy she never chose, the transgender person fired from a job because of who she is, the Dalit woman whose experience of violence carries the double burden of gender and caste, the Muslim woman whose family law continues to treat her as less than fully autonomous,

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the rural woman who cannot inherit ancestral land, the domestic worker who has no constitutional protection from the violence that occurs behind closed doors.

These questions are not secondary to the constitutional enterprise. They are its heart. A constitution that delivers genuinely equal government to men while delivering unequal society to women, to gender minorities, to Dalit women, and to religious minority women has not delivered constitutional justice at all. It has delivered half a constitution to half the population and called it liberation.

The argument of this part is that the Indian Constitution, in its design, its interpretation, and its institutional enforcement, has systematically failed the women, the gender minorities, and the intersectionally marginalized people of India. This failure is not accidental. It reflects deliberate choices made at the founding, reinforced through decades of patriarchal legislative and judicial practice, and disguised through a constitutional rhetoric of formal equality that has never been translated into the social and material reality of women's lives.

The failure also reflects something more dangerous: the active use of constitutional law to reinforce and legitimize the patriarchal, casteist, and communal structures that oppress women. Not merely the passive failure to protect, but the affirmative deployment of constitutional and legal power in the service of patriarchal domination. This is the hardest claim, and it is the one that most demands investigation, evidence, and constitutional reckoning.

Part Ten begins where Part Nine ended: with the intellectual foundation of constitutional renewal. But here the renewal is not primarily institutional. It is cultural, philosophical, and deeply personal. A constitution that speaks to women as full human beings, rather than as mothers, wives, daughters, or symbols of communal honor, has not yet been written for India. Writing it, or transforming the existing one into something approaching it, is the unfinished feminist revolution of Indian constitutionalism.

CHAPTER ONE: THE FEMINIST FOUNDATIONS AND THEIR CONSTITUTIONAL BETRAYAL

1.1 The Constitutional Moment and the Absent Women

When the Constituent Assembly gathered to deliberate on the future constitution of India between December 1946 and November 1949, it was a body that had made significant efforts, by the standards of its time, to include women. Fifteen women served as members of the Constituent Assembly: Ammu Swaminathan, Annie Mascarene, Begum Aizaz Rasul, Dakshayani Velayudhan, Durgabai Deshmukh, G. Durgabai, Hansa Mehta, Kamala Chaudhri, Leela Roy, Malati Chaudhry, Purnima Banerji, Rajkumari Amrit Kaur, Renuka Ray, Sucheta Kriplani, and Vijaya Lakshmi Pandit. Their participation represented a remarkable achievement in the context of a society in which women's political participation had been systematically constrained.

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But fifteen women out of approximately three hundred delegates is five percent representation. Five percent participation in the constitution-making process means that the constitutional choices that would govern the lives of more than half the Indian population were made predominantly by men, shaped by men's assumptions, and organized around men's understanding of what constituted the important questions.

The women who did participate were themselves predominantly from educated, upper-caste, upper-class backgrounds. They were not representative of the overwhelming majority of Indian women: the agricultural laborer, the domestic worker, the young widow under zamindari pressure, the Dalit woman carrying the weight of caste violence, the tribal woman whose land rights were in the process of being erased. These women had no voice in the Constituent Assembly. The women who did participate were extraordinary individuals of great personal courage and political capacity, and their contributions to the constitutional debates were significant. But their representativeness was limited.

Hansa Mehta, the most persistent advocate for women's rights in the Constituent Assembly, argued forcefully that the fundamental rights chapter should not refer to the rights of "men" but of "persons," and that the equality provision should explicitly guarantee equality between men and women without qualification. She largely succeeded in the textual battle: Article 14 guarantees equality before the law to all persons, Article 15 prohibits discrimination on the grounds of sex, and Article 16 guarantees equality of opportunity in public employment. These are gender-neutral provisions on their face, and Mehta's insistence on gender-neutral language was a significant contribution.

But the victory of gender-neutral language concealed an ambiguity that would haunt the constitutional project for decades. Gender-neutral language in the fundamental rights chapter meant that the Constitution treated men and women as formally equal subjects of constitutional rights. But the social reality within which the Constitution operated was a society of radical gender inequality, where women's formal rights were routinely overridden by social custom, religious personal law, family pressure, and physical violence, and where the institutions that were supposed to enforce constitutional rights were staffed overwhelmingly by men who had internalized the same patriarchal assumptions as the society at large.

Formal gender neutrality in a context of substantive gender inequality is not equality. It is the pretense of equality used to justify the inaction of the state in the face of continuing inequality. This was not, perhaps, what Hansa Mehta intended when she argued for gender-neutral language. But it is what the gender-neutral language of the fundamental rights chapter, in the context of the rest of the constitutional settlement, produced.

The rest of the constitutional settlement, specifically the decision to permit personal laws based on religion to continue to govern marriage, divorce, inheritance, and family life, was the critical failure point. It is here that the constitutional betrayal of women was most direct and most consequential.

1.2 The Personal Law Trap: How the Constitution Surrendered Women to Patriarchy

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The most consequential decision made about women's rights in the Constituent Assembly was a decision that was not made at the level of the fundamental rights chapter at all. It was made at the level of the directive principles: the decision to place the Uniform Civil Code in Article 44, among the non-justiciable aspirations of the state, rather than as a justiciable right or an affirmative constitutional obligation.

Article 44 of the Constitution provides: "The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India." The word "endeavour" is the critical qualifier. It does not require. It does not mandate. It does not provide a timeline. It does not give any citizen the right to enforce it. It is, in the constitutional vocabulary established by Article 37, an aspiration that is "binding on the state in the making of laws" but is "not enforceable by any court."

The effect of Article 44's non-justiciability is that the personal law systems, based on religion, which governed family life at the time of the Constitution's adoption have been permitted to continue in force for over seven decades. Hindu women, Muslim women, Christian women, Parsi women, and Jewish women in India remain governed by personal laws that, despite significant reforms in some communities, continue to place them in positions of legal disadvantage relative to men in matters of marriage, divorce, custody, maintenance, and inheritance.

The political reasons for this outcome are well-documented. The Congress party's coalition, which dominated the Constituent Assembly, included Muslim League members who insisted that Muslim personal law (Shariat) could not be overridden by a secular civil code without violating Muslim religious autonomy. The Hindu reformers, including Ambedkar, wanted to reform Hindu personal law, but significant conservative Hindu opinion was resistant to even this. The political equilibrium that was reached, that the state could over time reform personal laws through legislation while not constitutionally mandating uniformity, was a compromise that left women as the bearers of the costs of political accommodation between religious communities.

This is a critical point that is often lost in the contemporary debate about the Uniform Civil Code, where it is frequently framed as a conflict between majority and minority rights, between Hindu nationalism and Muslim autonomy. The feminist constitutional analysis is different. From the perspective of constitutional justice to women, the question is not which community's personal law prevails, but whether any personal law system premised on religious patriarchal authority should be permitted to override women's fundamental constitutional rights. The Hindu woman's subordination under traditional Hindu law is as much a constitutional problem as the Muslim woman's subordination under Shariat. The constitutional failure is not the privilege of one community's law over another but the privilege of all communities' patriarchal religious law over women's constitutional equality.

The Hindu Code Bills, drafted by Ambedkar and enacted in modified form in the 1950s as the Hindu Marriage Act (1955), the Hindu Succession Act (1956), the Hindu Minority and Guardianship Act (1956), and the Hindu Adoptions and Maintenance Act (1956), represented the most significant legislative intervention in personal law in the post-independence period. They abolished polygamy for Hindus, established the right to divorce, gave daughters inheritance

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rights (more limited than what Ambedkar originally proposed), and reformed guardianship law. These were real achievements, and they represented a partial vindication of the feminist constitutional vision.

But they were achieved against fierce political opposition, they were watered down in the legislative process in ways that substantially reduced their transformative impact, and they left in place the framework of a religiously based personal law system rather than creating the uniform civil code that Ambedkar and the women's movement had sought. The Hindu Succession Act, for example, gave daughters inheritance rights in ancestral property only from their father's share, not from the joint family property as coparceners. This limitation was not addressed until the 2005 amendment, which gave daughters equal coparcenary rights, and this amendment was itself the subject of litigation about its retrospective applicability that was not fully resolved until the Supreme Court's decision in Vineeta Sharma v. Rakesh Sharma in 2020.

The Muslim Women (Protection of Rights on Divorce) Act, 1986, enacted in the aftermath of the Shah Bano controversy, represents perhaps the most egregious instance of constitutional gender betrayal in the post-independence period. When the Supreme Court, in Mohammed Ahmed Khan v. Shah Bano Begum (1985), held that a Muslim divorced woman was entitled to maintenance beyond the iddat period under Section 125 of the Code of Criminal Procedure, it did so on the basis that the right to maintenance was a general statutory right available to all destitute women regardless of religion. The Chief Justice's judgment contained observations, controversial and in part ill-considered, about the superiority of a uniform civil code, but the core holding was about the maintenance rights of a destitute woman.

The response of the Rajiv Gandhi government was to override the Supreme Court's decision through legislation: the Muslim Women (Protection of Rights on Divorce) Act, 1986, took divorced Muslim women out of the purview of Section 125 CrPC and provided instead a system of maintenance within the iddat period, with post-iddat maintenance the responsibility of the woman's relatives or, failing them, the Waqf Board. This was constitutionally retrograde: it used Parliamentary legislation not to advance women's rights but to retreat from them, specifically to take a legal protection away from one of the most vulnerable categories of women in India, divorced Muslim women with no other means of support, in order to appease religious conservative male opinion.

The constitutional significance of this episode cannot be overstated. It demonstrated that the political class was willing to explicitly use legislative power to reduce women's legal protections in order to secure the political support of religious patriarchal leadership. It demonstrated that the formal equality provisions of the Constitution did not prevent the state from actively disadvantaging women when political considerations demanded it. And it established a precedent of executive and legislative capitulation to religious patriarchal pressure that has influenced the politics of gender and personal law ever since.

The triple talaq question, the practice of instant divorce by a Muslim man pronouncing talaq three times, represents the most recent chapter in this constitutional history. The Supreme Court, in Shayara Bano v. Union of India (2017), struck down the practice of instant triple talaq (talaq-e-bidat) as unconstitutional, with three of the five judges finding it violative of Article 14

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(equality) or Article 25 (freedom of religion). The Modi government subsequently enacted the Muslim Women (Protection of Rights on Marriage) Act, 2019, which criminalized the practice, making pronouncement of triple talaq a criminal offense punishable by imprisonment.

The criminalization of triple talaq raises its own constitutional complexities. The feminist argument that the practice is an instrument of gender oppression that violates women's constitutional dignity and equality is compelling. But the specific choice of criminalization, rather than civil law remedies, as the primary instrument of protection, has been criticized by feminist scholars including Flavia Agnes and Zakia Soman on the ground that it further disadvantages Muslim women by making their husbands liable to imprisonment, which is likely to worsen rather than improve the practical situation of women who depend economically on their husbands and who are unlikely to initiate criminal proceedings out of fear of the social and economic consequences.

This debate illustrates the complexity of feminist constitutional analysis in the context of personal law. The constitutional question is not simply whether religious patriarchal practices violate women's fundamental rights, they clearly do, but what kind of legal response best serves the actual interests of the women affected, taking into account the social, economic, and institutional context in which those women live. A constitutional reform that is satisfying in its doctrinal correctness but counterproductive in its practical operation is not feminist constitutional justice.

1.3 The Theoretical Architecture: Feminist Jurisprudence and Its Indian Variants

The theoretical framework for understanding the relationship between the Indian Constitution and gender justice must draw on several intellectual traditions that are partly overlapping and partly in tension.

Liberal feminist jurisprudence, associated with thinkers including Mary Wollstonecraft, John Stuart Mill, and, in the legal context, Ruth Bader Ginsburg and Catherine MacKinnon's earlier work, argues that the primary task of feminist legal reform is the removal of formal legal distinctions between men and women and the extension to women of all the legal rights and opportunities that men enjoy. On this framework, the constitutional task is one of anti-discrimination: identifying and removing the legal barriers to women's equal participation in all spheres of public and private life.

Liberal feminist jurisprudence has made significant contributions to Indian constitutional development. The anti-discrimination provisions of Articles 14 and 15, interpreted by courts as requiring the removal of formal legal distinctions based on sex in employment, education, and public life, have been important tools for women's legal equality. The decisions striking down laws that restricted women's employment in certain occupations or at certain hours, the decisions recognizing women's rights to equal property, the decisions enforcing women's rights to education, these have all been important applications of liberal feminist constitutional reasoning.

But liberal feminist jurisprudence has significant limitations that are particularly evident in the Indian context. Its focus on formal equality and the removal of legal barriers tends to obscure the

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ways in which gender inequality is reproduced through social structures, cultural norms, and the private sphere, rather than through formal legal discrimination. Women's inequality in India is not primarily a function of formal legal barriers (most formal barriers were removed or reduced by constitutional provisions and early legislation) but of structural social subordination that operates through family, community, culture, economics, and violence. A constitutional framework that focuses on formal equality will always fall short of what is needed to address this structural subordination.

Radical feminist jurisprudence, associated most powerfully with Catherine MacKinnon's later work, argues that the central organizing principle of gender inequality is not merely formal discrimination but power: specifically, the systemic domination of women by men through the control of women's sexuality, reproductive capacity, and bodies. On this framework, the constitutional task is not merely the removal of formal barriers but the restructuring of power relations, including through the legal regulation of sexual violence, pornography, prostitution, and other institutions through which male power over female bodies is exercised and maintained.

MacKinnon's analysis, applied to the Indian context, would highlight the systematic nature of sexual violence in India, the constitutional inadequacy of laws governing rape, sexual harassment, and domestic violence, the ongoing tolerance of marital rape, and the institutional failures of the police and courts in responding to sexual violence, as not merely failures of implementation but expressions of a constitutional order that is structurally organized around male power over female bodies.

The dominance theory approach has had significant influence in India, particularly in the jurisprudence of sexual harassment and sexual violence. The Vishaka guidelines on sexual harassment, established by the Supreme Court in 1997 in the aftermath of the gang rape of Bhanwari Devi, a Rajasthan state worker who was attempting to prevent a child marriage, represent an application of something like the MacKinnon framework: the recognition that sexual harassment in the workplace is not merely an individual act of wrongdoing but an exercise of power that violates the constitutional rights of women workers to equality and dignity.

Difference feminist jurisprudence, associated with scholars including Carol Gilligan and, in the Indian context, aspects of the work of Upendra Baxi and Ratna Kapur, argues that the pursuit of equality through assimilation to a male standard fails to recognize the distinctive experiences, values, and perspectives that women bring to law and legal institutions. On this framework, the constitutional task is not to make women equal to men but to value and protect the distinctive contributions that women make to society, including the reproductive and care work that is systematically undervalued by constitutional and legal frameworks designed around the male model of the autonomous worker.

The difference approach has been applied in Indian constitutional contexts to argue for maternity benefits, for constitutional protection of reproductive rights, and for the valuation of women's domestic and care work in legal frameworks governing property, maintenance, and social security. These are important applications, but the difference approach also carries a risk that feminist scholars have identified: that valuing women's difference can slide into prescribing

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women's difference, into reinforcing rather than transforming the gendered division of labor that has historically subordinated women.

Intersectional feminist jurisprudence, associated with Kimberle Crenshaw's foundational work and elaborated in the Indian context by scholars including Shilpa Phadke, Nivedita Menon, and Ania Loomba, insists that gender cannot be analyzed in isolation from caste, class, religion, disability, and other axes of social hierarchy. On this framework, the constitutional experiences of women are not uniform: a Dalit woman, a Muslim woman, a tribal woman, and an upper-caste Hindu woman in India face different configurations of advantage and disadvantage that cannot be reduced to the single axis of sex.

Intersectional analysis is essential to understanding why constitutional provisions that are apparently neutral with respect to caste and religion nevertheless operate differently for women at different positions within these hierarchies. The constitutional right to divorce, formally available to all women regardless of caste or religion, is exercised very differently by women with different levels of economic independence, social support, community acceptance of divorce, and access to legal assistance. The constitutional right against sexual violence is enforced very differently when the victim is a Dalit woman and the accused is a man from a dominant caste, compared with cases where both parties are from similar caste backgrounds.

The Indian feminist scholarship of the past two decades, represented by the work of Nivedita Menon, Flavia Agnes, Ratna Kapur, Uma Chakravarti, Pratiksha Baxi, and others, has developed a sophisticated body of theory that draws on all of these traditions while remaining attentive to the specific social configurations of India. This scholarship provides the theoretical foundation for the constitutional analysis that follows.

1.4 Constitutional Silences and the Grammar of Gender Exclusion

The Indian Constitution's relationship with gender is characterized by a pattern of selective silence that is as constitutionally significant as its explicit provisions. The Constitution explicitly prohibits discrimination on the grounds of sex. It explicitly guarantees equality before the law. It explicitly directs the state to make provision for securing just and humane conditions of work and maternity relief. These explicit provisions are real and important.

But the Constitution is silent on an extraordinary range of matters that are constitutionally critical for gender justice.

It is silent on domestic violence, the most prevalent form of violence against women in India, occurring predominantly in the private sphere of the home that the constitutional framework has been historically reluctant to enter.

It is silent on marital rape, the sexual violence within marriage that is simultaneously the most common and the most constitutionally protected form of sexual violence in India.

It is silent on women's reproductive rights, their right to determine whether and when to bear children, a right that touches the most intimate dimensions of bodily autonomy and that has been

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the subject of systematic state interference through coercive family planning programs, through restrictions on abortion, and through the ongoing discrimination between married and unmarried women in accessing reproductive health services.

It is silent on the gendered division of labor in the household and the unpaid reproductive and care work that women disproportionately perform, work that is constitutionally and economically invisible despite being foundational to the functioning of society and the economy.

It is silent on the gendered character of poverty, the fact that women in India are poorer than men not merely because they earn less in the formal economy but because the constitutional and legal framework of property, inheritance, and marriage does not recognize their economic contributions to the household or guarantee them economic security independent of their relationship to a male provider.

It is silent on women's political representation, providing no constitutional mechanism to ensure that women's share of political power approaches even minimal proportional representation, let alone the representative presence that would be required for women's voices to be genuinely heard in the constitutional governance of a country where they constitute half the population.

These silences are not neutral. Each of them represents a decision, whether deliberate or through the unconscious operation of the patriarchal assumptions of the framers, to leave women subject to forms of domination and disadvantage that the Constitution does not address. Each of them represents a space in which the state may, but is not required to, act in protection of women's constitutional interests. And each of them has been, and continues to be, exploited by those who benefit from women's subordination to resist constitutional change.

The constitutional analysis of these silences is the work of this chapter and those that follow.

CHAPTER TWO: GENDER-BASED VIOLENCE AND THE CONSTITUTIONAL FAILURE OF PROTECTION

2.1 The Constitutional Architecture of Sexual Violence Law

Sexual violence against women is one of the most pervasive forms of constitutional injury in India. The National Crime Records Bureau (NCRB) data for 2023 records over 31,000 reported rapes in India, a figure that all experts agree vastly underrepresents the actual incidence, given the multiple barriers that prevent women from reporting: police hostility to complainants, risk of social stigma, fear of the accused or his community, distrust of the legal system, and the emotional and practical costs of engaging with a system that has historically revictimized women in the process of pursuing justice.

The constitutional response to sexual violence in India has been shaped by two competing trajectories: one of progressive legislative and judicial development that has, over time, significantly strengthened the legal framework for addressing sexual violence, and one of

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persistent institutional failure in the implementation of that framework, particularly for women from marginalized communities.

The early constitutional history of rape law was marked by a fundamental contradiction between the constitutional commitment to equality and dignity and the legal framework's practical treatment of women who reported rape. The decision in Tukaram v. State of Maharashtra (1979), in which the Supreme Court acquitted policemen of the rape of Mathura, a young tribal woman, on the grounds that she had not "screamed loud enough" and that the absence of marks of struggle suggested her "consent," was not merely a wrong judicial decision. It was a constitutional scandal that exposed the deep alignment between the formal legal system and the patriarchal social assumptions that rendered women's bodily integrity constitutionally unprotected in practice.

Mathura's case became a constitutional flashpoint. The open letter to the Chief Justice of India signed in 1979 by four law professors, Lotika Sarkar, Vasudha Dhagamwar, Upendra Baxi, and Raghunath Kelkar, calling attention to the constitutional failings of the Mathura judgment, was a founding moment of the Indian feminist legal movement. The subsequent campaign for legal reform led to the Criminal Law (Amendment) Act, 1983, which introduced a rebuttable presumption of non-consent in cases of custodial rape, shifted the burden of proving consent to the accused, and imposed a minimum mandatory sentence in certain categories of rape. These were significant reforms, achieved through feminist constitutional advocacy operating on the formal legal process.

The 2012 Delhi gang rape case, in which Jyoti Singh (named publicly only after her death) was brutally gang-raped and murdered on a Delhi bus, became another constitutional moment of feminist mobilization. The scale of public protest that followed, involving hundreds of thousands of people in Delhi and across India, created the political conditions for the most comprehensive reform of sexual violence law in Indian history: the Criminal Law (Amendment) Act, 2013, enacted on the basis of the Justice Verma Committee Report.

The Verma Committee, chaired by former Chief Justice of India J.S. Verma and including former Solicitor General Gopal Subramanium and advocate Leila Seth, produced a landmark report in thirty days that ranged far beyond the immediate question of sexual assault law to address the constitutional framework for gender equality in India. The report recommended the criminalization of marital rape, the rejection of the armed forces' claim to exemption from criminal law for sexual violence, the reform of the medical examination procedures for rape survivors, and a comprehensive reimagining of the framework for preventing and addressing violence against women.

The government adopted many of the Verma Committee's recommendations in the 2013 legislation, which significantly broadened the definition of sexual assault, introduced new offenses including stalking, voyeurism, and acid attacks, strengthened procedural protections for survivors, and introduced fast-track courts for sexual violence cases. But the government explicitly rejected the recommendation to criminalize marital rape, retaining the marital rape exception in what became Section 375 Exception 2 of the Indian Penal Code and is now retained in Section 63 Exception 2 of the Bharatiya Nyaya Sanhita (BNS), 2023.

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2.2 Marital Rape and the Constitutional Reckoning

The marital rape exception is the single most constitutionally disgraceful provision of Indian criminal law. It provides that sexual intercourse by a man with his own wife, the wife not being under 18 years of age, is not rape. In a single sentence, it deprives married women of the constitutional protection of their bodily integrity that is available to all other persons in India. It creates a category of constitutional sub-personhood for married women with respect to sexual violence: by virtue of their marital status, they are entitled to less constitutional protection of their bodies than unmarried women, than men, than children, than prisoners.

The constitutional argument against the marital rape exception is not merely that it discriminates against married women, which it clearly does. It is that it affirmatively authorizes and protects sexual violence by husbands against wives, thereby making the state complicit in the violation of women's constitutional rights to dignity, bodily integrity, and equality. The exception converts the state's constitutional obligation to protect women from violence into an obligation to protect the husband's "right" to access his wife's body without her consent. This is not a constitutionally neutral position. It is a constitutional endorsement of patriarchal power over women's bodies.

The jurisprudential foundation for the exception, to the extent it has one, draws on the eighteenth-century English common law dictum attributed to Chief Justice Matthew Hale that by marriage a wife gives "irrevocable consent" to sexual intercourse with her husband. This concept, of irrevocable consent given once for all time at the moment of marriage, regardless of what happens in the marriage thereafter, is philosophically incoherent by any standard of constitutional jurisprudence developed in the past century. Consent, in any constitutionally credible understanding of the term, is revocable, specific, and ongoing. A woman who married a man at 20 and is raped by him at 40 has not given consent to that specific act. She has given, at most, a vague social and perhaps legal signal that she entered into a relationship with that person that was then understood to include sexual activity. The criminal law's treatment of that signal as irrevocable consent to all subsequent sexual acts is philosophically untenable and constitutionally monstrous.

The split High Court judgment on marital rape from the Delhi High Court in May 2022 illustrated both the strength of the feminist constitutional argument and the political resistance to its acceptance. Justice Rajiv Shakdher held that the marital rape exception violated Articles 14, 19, and 21 of the Constitution, that it was premised on a conception of marriage as conferring upon the husband an absolute right to sexual access to his wife's body, and that this conception was irreconcilable with the constitutional guarantees of dignity, autonomy, and equality. Justice C. Hari Shankar, in contrast, held that the exception was constitutionally valid, that Parliament was entitled to treat marriage as a special context in which the criminal law of rape operated differently, and that the court should defer to legislative judgment about the balance between competing social values.

The split judgment meant that the matter was referred to the Supreme Court, where it has been pending. As of April 2026, the Supreme Court has not decided the matter. This delay is itself constitutionally significant. The constitutional question of whether the state may maintain a provision that affirmatively protects sexual violence against married women is not a question on

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which extended deliberation is necessary. It is a question that answers itself from first principles of constitutional law: the state may not maintain such a provision. The failure to decide the question reflects, once again, the judicial reluctance to deliver a constitutional ruling that would significantly challenge a socially and politically entrenched structure of patriarchal power.

Meanwhile, in December 2025, Congress MP Shashi Tharoor introduced a private member's Bill in the Lok Sabha to criminalize marital rape. The Bill, while unlikely to pass given the current parliamentary arithmetic, represents an important statement of legislative intent and has renewed public debate on the question. As of December 2025, the question of marital rape criminalization remains unresolved, with legislative pushes and ongoing constitutional debates that feminist movements have been conducting for decades. Feminism in India The constitutional obscenity of the marital rape exception persists, protected by political inaction and judicial diffidence.

2.3 The Institutional Architecture of Gender-Based Violence Response

The constitutional failure to protect women from gender-based violence is not only a failure of substantive law. It is, equally fundamentally, a failure of the institutional architecture through which law is enforced.

The police, as Part Nine of this textbook has argued, are constituted under a colonial framework oriented toward the management of populations rather than the protection of citizens. For women who experience gender-based violence, the colonial character of the police is experienced with particular intensity. The barriers that women face in reporting sexual violence and domestic violence to the police are not merely cultural or psychological. They are structural features of the way policing operates.

Police stations in India are, with very few exceptions, male-dominated institutions in which women complainants must navigate both the formal requirements of registering a complaint and the informal social dynamics of a male institution whose members often share the patriarchal assumptions of the broader society. Women who report rape, particularly rape by someone they know (which constitutes the overwhelming majority of reported rapes), face questioning that is designed to establish whether their conduct "invited" the assault, whether their sexual history makes their account of non-consent credible, and whether the complaint is motivated by reasons other than the desire for justice. This is not merely bad policing practice. It is the structural expression of a legal and constitutional framework that has historically placed the burden of proof for sexual violence on women rather than on the state.

The requirement of a medical examination following a reported rape is another institutional locus of constitutional failure. The examination, originally justified as necessary for the gathering of forensic evidence, has frequently been conducted in ways that are degrading and traumatic for the survivor, focused not only on the gathering of evidence but on the "two-finger test," the examination of the vagina to assess its "laxity," which has been used to characterize the complainant as a woman of "loose morals" and therefore an unreliable witness. The Supreme Court formally condemned the two-finger test in Lillu alias Rajesh v. State of Haryana (2013) and ordered its discontinuation. The Bharatiya Nagarik Suraksha Sanhita, 2023, explicitly prohibits the two-finger test in Section 184. And yet laws and judicial mandates around victim-

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sensitive evidentiary norms continue to face significant barriers in operationalization, with inadequate training of enforcement personnel as a persistent problem. National Law University Delhi

The fast-track courts established after the 2013 amendments were intended to address the problem of delay in sexual violence cases. But the implementation of the fast-track system has been uneven, under-resourced, and inconsistent across states. Many sexual violence cases still take years to reach conclusion. The Supreme Court's monitoring of the fast-track court system has revealed persistent problems of adjournments, absence of witnesses, lack of legal aid for complainants, and inadequate judicial training in the handling of sexual violence cases.

The Protection of Women from Domestic Violence Act, 2005 (PWDVA) was a landmark piece of legislation that, for the first time, recognized domestic violence as a legal wrong against women and created a range of civil remedies including protection orders, residence orders, and monetary relief. But the implementation of the PWDVA has been deeply inadequate. The Act has faced significant barriers in operationalization, with inadequate training of enforcement personnel, lack of resources, and societal resistance undermining its effectiveness. Lack of support services for victims such as shelters, legal aid, and counselling, along with the societal stigma attached to divorce and domestic violence, prevent many women from seeking justice. National Law University Delhi

The Protection Officers, who are the primary institutional actors responsible for implementing the PWDVA at the local level, are in most states appointment without adequate training, without dedicated resources, and with responsibilities divided across multiple roles. The Shelter Homes required to provide refuge to women fleeing domestic violence are inadequate in number, under-resourced, and in some cases sites of further abuse. The link between the PWDVA's civil protection framework and the criminal law framework for domestic violence is legally unclear and institutionally poorly coordinated. The result is a law that is progressive in its design and inadequate in its delivery.

2.4 Sexual Harassment at Work: Vishaka, POSH, and the Limits of Law

The Vishaka case (Vishaka v. State of Rajasthan, 1997) is one of the most celebrated examples of Indian judicial activism in the service of women's constitutional rights. The case arose from the gang rape of Bhanwari Devi, a saathin (community worker) employed by the Rajasthan government in its Women's Development Program, while she was attempting to prevent a child marriage in a village in Rajasthan. The perpetrators were men from dominant caste families in the village. The police declined to register the case effectively, the trial court acquitted the accused, and the case became a catalyst for a broader constitutional challenge.

The Supreme Court, unable to wait for the parliamentary legislation that would properly address sexual harassment at work, used its powers under Article 32 to issue comprehensive guidelines, known as the Vishaka guidelines, requiring all employers in India to establish grievance mechanisms for sexual harassment, prohibiting sexual harassment in the workplace, and defining sexual harassment broadly to include physical contact, sexually colored remarks, showing pornography, or any other unwelcome physical, verbal, or non-verbal conduct of a sexual nature.

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The Vishaka guidelines were a remarkable exercise of constitutional creativity. They effectively legislated in the absence of legislation, creating legally binding rules that applied to all employers in India. They were grounded in the constitutional principles of Articles 14, 15, and 21, in the state's constitutional obligation under Article 42 to provide just and humane conditions of work, and in India's international obligations under CEDAW. And they worked, in a limited sense: they required the establishment of Complaints Committees in workplaces, created a legal standard against which sexual harassment could be measured, and gave women in formal employment settings a formal mechanism for complaint.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act) converted the Vishaka guidelines into statutory law, with some modifications. The POSH Act requires all employers with 10 or more employees to establish an Internal Complaints Committee (ICC), requires establishments without sufficient employees to use a Local Complaints Committee (LCC) established by the district officer, and sets out a process for the investigation and resolution of complaints.

But the POSH Act has significant constitutional and practical limitations. It applies only to women, not to all workers, including men, transgender persons, and non-binary individuals who experience sexual harassment. It focuses on the formal workplace, leaving unaddressed the vast majority of working women in India who work in the informal economy, as domestic workers, agricultural laborers, construction workers, and self-employed persons in unorganized sectors. The POSH Act has faced significant barriers in operationalisation, with issues including inadequate training of enforcement personnel, lack of resources, and societal resistance undermining its effectiveness. National Law University Delhi

The #MeToo movement in India, which gained momentum in October 2018, exposed both the prevalence of sexual harassment in formal professional settings and the inadequacy of existing institutional mechanisms. The movement produced a wave of public accusations against prominent individuals in media, entertainment, academia, and other fields, and revealed that the ICC mechanisms under the POSH Act had, in many instances, been manipulated by employers to protect powerful men rather than to provide justice to complainants. The movement also exposed the inadequacy of legal protection for women who made public accusations outside the POSH process, many of whom faced defamation threats and other forms of legal retaliation.

The constitutional response to the #MeToo movement was inadequate. There was no systematic review of the POSH Act or its implementation. There was no expansion of the Act's coverage to the informal sector. There was no legislative action to protect women who made public disclosures from defamation liability. The constitutional commitment to women's right to work without sexual harassment remained formally strong but practically weak, and the institutional mechanisms for its enforcement remained deeply inadequate.

CHAPTER THREE: THE FAMILY, THE CONSTITUTION, AND THE PRIVATE SPHERE

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3.1 The Public-Private Divide and Its Constitutional Consequences

One of the most important analytical tools in feminist jurisprudence is the critique of the public-private distinction: the constitutional and legal tradition's tendency to treat the "public" sphere of government, markets, and formal employment as the domain of constitutional rights and legal regulation, while treating the "private" sphere of family, household, and personal relations as a domain of autonomy exempt from constitutional scrutiny.

The public-private distinction is not neutral with respect to gender. The spaces in which women's rights are most systematically violated, the home, the family, the intimate relationship, are precisely the spaces that the constitutional framework has been most reluctant to enter in the name of "privacy" and "family autonomy." The spaces that are constitutionally most robustly protected, the workplace, the political process, the courts, are spaces that women have historically been excluded from and from which they continue to be structurally underrepresented.

Feminist legal scholars from Carol Smart to Nicola Lacey to Ratna Kapur have argued that the public-private distinction is not merely analytically problematic but politically pernicious: it creates a constitutional shield for the forms of domination, including domestic violence, marital rape, forced marriage, and the economic dependence enforced by the non-recognition of women's domestic work, that most affect women's lives. The constitutional protection of "family autonomy" is, in this analysis, a constitutional protection of men's power over women within the family.

The Indian Constitution's approach to the family and personal life is deeply inconsistent on this analysis. On the one hand, the fundamental rights chapter provides strong protections for individual liberty, dignity, and equality that apply in principle regardless of the relational context in which they are exercised. On the other hand, the constitutional permission of religious personal law systems, the constitutional silence on domestic violence and marital rape, and the Directive Principles' aspirational rather than mandatory approach to social reform, together create a constitutional framework that defers to patriarchal family structures rather than challenging them.

The Supreme Court's recognition of a right to privacy in the Puttaswamy judgment (2017) added a new dimension to this analysis. Privacy, the Court held, is a fundamental right under Article 21, and it includes the right to make intimate personal decisions including decisions about sexuality, reproduction, and personal relationships free from state interference. This is an important constitutional development that has been used to support both the decriminalization of homosexuality (Navtej Singh Johar, 2018) and arguments for women's reproductive autonomy.

But privacy is a double-edged constitutional tool. The same privacy right that protects women's choices about their bodies and relationships can, in a patriarchal legal context, be invoked to shield the family from constitutional scrutiny, to protect men's "private" conduct within the household from constitutional accountability. The feminist constitutional challenge is to develop a theory of privacy that protects individual autonomy against both state and non-state intrusion,

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including the intrusion of patriarchal family authority, without creating a constitutional sanctuary for private abuse.

3.2 Marriage, Divorce, and the Constitutional Grammar of Abandonment

The legal framework of marriage in India, governed by separate religious personal laws for different communities, creates a constitutional landscape of extraordinary inequality in women's access to the most fundamental protections of family law.

The right to divorce, the right to exit an abusive or failed marriage, is constitutionally essential. Without the right to divorce, a woman who is trapped in a violent or exploitative marriage has no constitutional exit. She cannot access the state's protection without first subjecting herself to the institutional hostility that characterizes the police and judicial response to women who challenge their husbands' authority. She cannot access her constitutional rights to dignity and bodily integrity in a context where those rights are systematically violated within the marriage and the state refuses to intervene.

The Hindu Marriage Act, 1955 provides for divorce on specified grounds including cruelty, adultery, desertion, and mental illness, and has been interpreted by courts to allow irretrievable breakdown of marriage as a ground for divorce through the exercise of the Supreme Court's powers under Article 142. The Muslim personal law, as generally interpreted, permits a man to divorce his wife by pronouncement of talaq, while a Muslim woman's right to divorce (khul) requires either the husband's agreement or a court order. The Christian marriage and divorce law, governed by the Indian Divorce Act, 1869, was archaic and discriminatory in its original form and has been the subject of successive amendments. The Parsi marriage and divorce law has its own distinct framework.

The result is a constitutional landscape in which the ease with which a woman can exit a marriage, and the terms on which she can do so, depend significantly on her religious identity. This is a constitutional problem of equality on two levels: it is a discrimination between women of different religious communities, and it is a discrimination against all women relative to men, because in every personal law system, women's access to divorce is more restricted and the conditions of divorce are more disadvantageous for women than for men.

The constitutional argument for a Uniform Civil Code, as a means of addressing these inequalities, has a long feminist history. But the feminist argument for the UCC must be distinguished from the BJP government's political deployment of the UCC demand. The feminist argument is for a UCC that protects women's rights equally regardless of religious identity, that provides equal rights to divorce, equal rights to maintenance, equal rights to custody, and equal rights to property. The BJP government's UCC agenda, as evidenced by its enactment of the Uttarakhand Uniform Civil Code Act, 2024, the first state-level UCC in India, has been criticized by feminist scholars and by Muslim and Christian women's organizations for focusing on the regulation of Muslim marriage practices, particularly polygamy, while not systematically addressing the inequalities in Hindu personal law that also disadvantage women, including the continuing discrimination in agricultural land inheritance in many parts of India.

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The Uttarakhand UCC Act, 2024 is the first legislative attempt to implement the constitutional directive of Article 44 in a comprehensive way. Its significance as a constitutional experiment is substantial, but its content and implementation have generated serious concerns. The Act's provisions on live-in relationships, which require registration of live-in relationships and impose obligations similar to marriage, have been criticized as an intrusion into personal autonomy rather than a protection of women. The Act does not fully equalize inheritance rights. Its treatment of scheduled tribes, which has been criticized as constitutionally problematic given the Fifth Schedule protections, has been contentious. The broader question of whether a state government can enact a UCC, given that marriage and divorce are Concurrent List subjects under the Seventh Schedule, remains legally contested.

The constitutional story of the UCC is a story in which the feminist demand for equal family law rights has been appropriated by majoritarian politics for communal purposes. The result is that the feminist constitutional case for genuine equality in family law, a case that would require addressing inequalities in Hindu personal law as much as in Muslim personal law, has been obscured by the political deployment of the UCC demand as an instrument of anti-Muslim nationalism. This appropriation does not make the feminist case for family law reform wrong. It makes it more complicated, and it requires feminist constitutional scholars to insist on the distinction between the feminist case for equal family law and the majoritarian case for Hindu cultural dominance dressed up in the language of uniformity.

3.3 Maintenance, Property, and the Economics of Gender Subordination

The economic subordination of women in India is sustained by a complex web of legal provisions, social norms, and constitutional silences that together ensure that most women have less economic independence, less property ownership, and less financial security than men in comparable social positions.

The constitutional framework of property and inheritance is one dimension of this. The Hindu Succession Act, 1956, as amended in 2005, gives daughters equal coparcenary rights in ancestral property. This is an important reform, achieved through the sustained advocacy of women's rights organizations and the feminist legal movement. But its implementation has been contested and incomplete. In many rural areas, daughters are pressured to sign away their inheritance rights in favor of brothers, a pressure that is effective because of the economic dependence that these same inheritance inequalities help to create. The 2005 amendment's retrospective applicability was disputed until the Supreme Court's decision in Vineeta Sharma in 2020 settled the matter, but the gap between legal right and practical reality of women's property ownership remains enormous.

For Muslim women, the Sharia-based law of inheritance provides daughters with half the share of sons, and widows with a fraction of the estate, while the larger share goes to male relatives. This systematic half-share principle is justified within Islamic legal tradition but is constitutionally problematic from the perspective of equality. The constitutional accommodation of Muslim personal law has meant that the courts have not applied the equality provisions of the Constitution to override Sharia inheritance rules, on the ground that personal law is protected from the fundamental rights chapter by the State's definition in Article 13.

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The maintenance law applicable to divorced women across religious communities is a particularly critical constitutional concern. After divorce, most Indian women are economically vulnerable: many have not been in formal employment during the marriage, their contributions to the household economy through domestic and reproductive work are constitutionally and legally invisible, and the formal legal mechanisms for ensuring post-divorce financial support are inadequate.

The Supreme Court's 2024 jurisprudence on maintenance represented an important constitutional development. Multiple judgments in 2024 clarified rights of women in live-in relationships, establishing that women in live-in relationships are entitled to maintenance. Legal Service India This development, while important in extending constitutional protection to non-marital relationships, does not address the fundamental constitutional problem of women's economic vulnerability after marriage dissolution.

The constitutional response to the economics of gender subordination requires not merely the reform of maintenance and inheritance law, important as that is. It requires a constitutional recognition of the economic value of domestic and reproductive work, a recognition that would have profound implications for how property accumulated during marriage is divided on dissolution, for how social security and pension entitlements are calculated, and for how the state's constitutional obligations to women's economic equality are understood.

CHAPTER FOUR: REPRODUCTIVE RIGHTS AND THE CONSTITUTIONAL POLITICS OF THE BODY

4.1 Abortion Rights and the Constitutional Evolution

The constitutional status of reproductive rights in India has evolved significantly over the past three decades, but the evolution has been uneven, contested, and incomplete in ways that reflect the persistent tension between women's constitutional autonomy and the patriarchal and communal politics that continue to shape family law.

The Medical Termination of Pregnancy Act, 1971 (MTP Act) was, at the time of its enactment, one of the more liberal abortion laws in the world, permitting abortion on a range of medical and social grounds up to 20 weeks of pregnancy. The Act required the opinion of one registered medical practitioner (or two for abortions between 12 and 20 weeks) that continuation of the pregnancy would constitute a risk to the woman's life or physical or mental health, or that there was a substantial risk of serious physical or mental abnormality in the child.

The constitutional framework of the MTP Act, however, placed reproductive decisions in the hands of medical professionals rather than women themselves. A woman seeking an abortion under the original MTP Act was required to obtain medical certification of the grounds for termination; she could not simply decide, as a matter of constitutional autonomy over her own body, that she did not wish to continue the pregnancy. The Act's approach, while more liberal

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than many contemporaneous laws, reflected a paternalistic medical model that treated the decision to terminate pregnancy as a medical rather than a personal decision.

The 2021 amendments to the MTP Act significantly expanded women's access to safe and legal abortion, extending the gestational limit to 24 weeks for certain categories of women including rape survivors, victims of incest, minor girls, disabled women, and women with pregnancy complications. The Supreme Court's 2022 decision in X v. Principal Secretary, Health and Family Welfare Department extended the 24-week limit to all women, including unmarried women and single women, holding that the distinction between married and unmarried women in the original Act and regulations was unconstitutional discrimination on the grounds of marital status, that violated Article 14.

The Supreme Court's 2022 ruling affirmed that all women, regardless of marital status, are entitled to safe and legal abortion up to 24 weeks under the MTP Act, addressing discrimination based on marital status. Dalvoy This was an important constitutional development. But the 2022 ruling, while progressive in extending access, did not go so far as to recognize a constitutional right to abortion grounded in women's autonomy over their own bodies. The Court's reasoning was primarily formal, focusing on the discrimination between married and unmarried women, rather than substantive, grounding the right to abortion in the constitutional principle that women have the right to make decisions about their own bodies free from the state's control.

The constitutional landscape of reproductive rights in India in 2025 and 2026 continues to be troubled by the gap between formal legal access and practical access. Healthcare providers, fearing criminal prosecution, routinely send pregnant women to court even when the law does not demand it, resulting in delays, retraumatisation, and rights violations. What emerges is a regressive judicial trend, wherein abortion access is being judicialized instead of being treated as routine healthcare. Feminism in India

This judicialization of abortion access is a constitutional phenomenon of great significance. When women seeking legal abortions are directed by hospitals and clinics to seek court orders before the procedure can be performed, the practical effect is the denial of access through delay, cost, and retraumatization. Women who need abortions under time-sensitive medical circumstances cannot wait for the delays of the judicial system. The judicialization of abortion reflects a constitutional culture in which women's bodily autonomy is treated as presumptively suspect, requiring judicial validation, rather than as a fundamental constitutional right that can be exercised without institutional permission.

The constitutional framework of reproductive rights must also grapple with the history of coercive family planning in India. The Emergency period sterilization campaign, which saw hundreds of thousands of people, predominantly poor Muslim men and lower-caste people, subjected to coerced or non-consensual sterilization in pursuit of Sanjay Gandhi's demographic targets, represents the most extreme example of the state's use of reproductive control as an instrument of political power. But the coercive and manipulative use of family planning as a policy tool has continued in less extreme forms in the post-Emergency period, with documented instances of coerced sterilization of tribal women, of inhumane conditions at sterilization camps

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where deaths have occurred, and of incentive structures that effectively constitute economic coercion of poor women to submit to sterilization.

The constitutional framework provides women with protection against coerced sterilization under the right to life and bodily integrity in Article 21. But the enforcement of this protection against state programs that operate through a combination of incentives, social pressure, and institutional coercion rather than through outright force has been difficult. The courts have been reluctant to scrutinize family planning programs as violations of reproductive rights, preferring to see them as the exercise of legitimate state health policy.

4.2 The Surrogacy Framework and New Constitutional Questions

The Surrogacy (Regulation) Act, 2021, which permits altruistic surrogacy but prohibits commercial surrogacy in India, creates a new set of constitutional questions about reproductive rights, women's bodily autonomy, and the commodification of reproductive labor.

The prohibition of commercial surrogacy was motivated partly by concerns about the exploitation of poor women who entered into commercial surrogacy arrangements under economic pressure, and partly by concerns about the medical risks of surrogacy and the rights of children born through surrogacy. These are legitimate concerns. But the specific form of the prohibition, which bans commercial surrogacy entirely and permits only altruistic surrogacy by a "close relative," raises constitutional questions about whether the state is adequately protecting the interests of poor women who wished to earn income through surrogacy, or whether the prohibition is a form of paternalistic regulation that overrides women's own decisions about how to use their reproductive capacity.

The feminist constitutional analysis of surrogacy is deeply divided. Abolitionist feminists argue that commercial surrogacy, even when nominally voluntary, is always exploitative, because it arises in a context of economic inequality that makes genuine consent impossible. They see the prohibition of commercial surrogacy as a constitutional protection of poor women from exploitation. Choice feminists argue that prohibiting commercial surrogacy denies women the constitutional autonomy to decide what to do with their bodies, including their reproductive capacity, and that the appropriate constitutional response to exploitation risks is regulation rather than prohibition.

The Indian Constitution does not resolve this debate through any explicit provision. The resolution must be found through the application of constitutional principles of autonomy, dignity, equality, and the state's constitutional obligation to protect women from exploitation, and these principles do not clearly point in a single direction.

CHAPTER FIVE: SEXUALITY, QUEER RIGHTS, AND THE CONSTITUTIONAL JOURNEY FROM CRIMINALIZATION TO PARTIAL DIGNITY

5.1 Section 377, Navtej Singh Johar, and the Limits of Constitutional Victory

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The constitutional trajectory of LGBTQ+ rights in India is one of the most dramatic in the history of the Constitution. Within the span of nine years, the Indian legal system moved from the Supreme Court's reinstatement of the criminalization of "carnal intercourse against the order of nature" in Suresh Kumar Koushal v. Naz Foundation (2013) to the landmark decriminalization in Navtej Singh Johar v. Union of India (2018), to the refusal of same-sex marriage recognition in Supriyo v. Union of India (2023) and the rejection of review petitions in January 2025. This trajectory illustrates both the possibilities and the profound limits of constitutional transformation through judicial interpretation in the absence of legislative action.

Section 377 of the Indian Penal Code, which criminalized "carnal intercourse against the order of nature," was a direct inheritance from colonial law, drawn from the Labouchere Amendment to English criminal law enacted in 1885 at a time when Victorian sexual morality was at its most repressive. The provision was applied primarily against gay men, transgender persons, and, in the colonial period, against persons who challenged the sexual norms of British imperial society. It was a provision that was explicitly designed to enforce the sexual morality of one civilization on another, and its continued presence in Indian criminal law after independence represented exactly the kind of colonial inheritance that a genuinely decolonized constitutional order should have addressed at the founding.

The Delhi High Court's 2009 decision in Naz Foundation v. Government of NCT of Delhi, which read Section 377 down to exclude consensual sexual activity between adults in private, was a landmark application of constitutional reasoning to queer rights. The Court held that Section 377 violated Articles 14, 15, and 21 of the Constitution, that sexual orientation was a ground of non-discrimination within the meaning of Article 15, and that the right to life under Article 21 included the right to live one's life with dignity, which required the freedom to express one's sexual identity.

The Koushal reversal in 2013, in which a two-judge bench of the Supreme Court overturned the Delhi High Court, was a constitutional catastrophe. The Court's reasoning, that only a "minuscule fraction" of the country's population were gay and therefore the constitutional question was of minimal importance, was not merely wrong in its counting. It was wrong in its constitutional logic: fundamental rights are not subject to a population-share test. The constitutional protection of a fundamental right does not diminish because the group seeking protection is small.

Navtej Singh Johar in 2018 corrected the Koushal error and re-established the constitutional principle that sexual orientation is a protected ground of non-discrimination and that the constitutional right to dignity, autonomy, and identity includes the right to express one's sexual identity. The five-judge bench's judgments, particularly those of Chief Justice Dipak Misra and Justice D.Y. Chandrachud, are among the most philosophically rich in the history of Indian constitutional adjudication. Justice Chandrachud's concurring judgment, in particular, located the right of queer persons to exist and to express their identity in the most foundational principles of constitutional morality, holding that the function of a constitution is precisely to protect those who do not conform to the majority's understanding of acceptable behavior.

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But Navtej Singh Johar, for all its constitutional achievement, left the legal status of LGBTQ+ persons in India profoundly incomplete. Decriminalization of consensual sexual activity between adults is the most basic threshold of constitutional protection, not the apex of it. The full constitutional dignity of LGBTQ+ persons requires, at a minimum, the right to marry and to have that marriage recognized by the state with all the legal consequences that flow from marriage: the right to each other's property, the right to make medical decisions, the right to adopt children, the right to insurance coverage as a spouse, the right to survivor's pension, and the protection of the law in the event of domestic violence.

5.2 The Same-Sex Marriage Refusal and Its Constitutional Inadequacy

The Supreme Court's 2023 decision in Supriyo v. Union of India, rejecting the claim of same-sex couples to the constitutional right to marry, was a deeply disappointing moment for constitutional justice in India. The Court, by a majority of three to two, held that there is no fundamental right to marriage under the Constitution, that the constitutional protection of existing marriages is not equivalent to a right to have one's relationship recognized as a marriage, and that the question of whether to extend marriage to same-sex couples is a matter for Parliament rather than for the courts.

The majority's reasoning drew a distinction between constitutional decriminalization (which the Court had provided in Navtej) and constitutional recognition (which it declined to provide in Supriyo). This distinction is analytically real: there is a difference between the state's obligation to refrain from criminalizing particular conduct and the state's obligation to provide positive legal recognition to a particular type of relationship. But the distinction does not resolve the constitutional question, because the Constitution's equality and dignity provisions are applicable to both the negative obligation to refrain from discrimination and the positive obligation to provide equal treatment.

Justice D.Y. Chandrachud, in his dissenting judgment in Supriyo (he had, in the intervening period, become Chief Justice), offered a powerful constitutional analysis of why the refusal of same-sex marriage recognition violated the constitutional rights of gay and lesbian couples. He argued that the right to marry was implicit in the right to life, dignity, and equality under Article 21, that the denial of marriage recognition to same-sex couples was direct discrimination on the grounds of sexual orientation (a protected ground under Navtej), and that it produced a cascade of legal disabilities for same-sex couples in areas including property, inheritance, medical decision-making, and child custody that amounted to a regime of second-class citizenship.

The majority's response, that these questions are better addressed by Parliament, has a formal democratic legitimacy that cannot be entirely dismissed. Legislative reform of marriage law, arrived at through the democratic process, would have a broader base of social consent than a judicial decree. But the history of constitutional change in India, particularly in the area of minority rights, suggests that parliamentary processes will not deliver equal marriage rights to same-sex couples in any foreseeable political future. The BJP, which controls Parliament, is committed to a vision of Hindu family and sexual morality that is fundamentally incompatible with equal marriage rights. The Congress party's position on same-sex marriage has been

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ambiguous. No major political party has made the rights of queer persons a central electoral commitment.

The constitutional consequence of the majority's deference to Parliament is that same-sex couples in India continue to live with a constitutionally deficient legal status, denied the legal protections and the social recognition that heterosexual couples take for granted. In January 2025, a five-judge bench of the Supreme Court rejected review petitions challenging its 2023 decision that declined to legalise same-sex marriage. Feminism in India This rejection confirmed that the question, for the present, remains in the hands of a Parliament that has shown no inclination to act.

The constitutional argument for same-sex marriage recognition is not solely about same-sex couples. It is about the constitutional character of the state's relationship with all its citizens. A state that recognizes the intimate partnerships of some citizens but not others on the basis of the sexual identity of the partners is a state that has not yet delivered constitutional equality. The Constitution's promise is not merely that citizens will be treated equally in the marketplace or at the polling station. It is that they will be treated equally in the full breadth of their lives, including the most intimate dimensions of who they are and who they love.

5.3 Transgender Rights: Between Constitutional Recognition and Institutional Indifference

The constitutional journey of transgender rights in India began with the landmark NALSA judgment (National Legal Services Authority v. Union of India, 2014), in which the Supreme Court recognized transgender persons as a "third gender" for constitutional purposes, held that their right to gender identity was protected under Articles 14, 15, 19, and 21, and directed the state to take affirmative measures including reservation in educational institutions and public employment.

The NALSA judgment was a remarkable constitutional achievement that placed India, in 2014, at the forefront of global jurisprudential development on transgender rights. Its theoretical framework drew on international human rights standards including the Yogyakarta Principles, recognized the right to self-identification of gender as fundamental, and explicitly rejected the requirement of surgical intervention as a prerequisite for legal gender recognition.

But the translation of the NALSA judgment's constitutional principles into law and institutional practice has been deeply inadequate. The Transgender Persons (Protection of Rights) Act, 2019, which was enacted to give legislative form to the NALSA principles, has been criticized extensively by transgender rights organizations and legal scholars for falling far short of the constitutional vision. The Act required a certification process for legal gender recognition that, in its original form, required a district magistrate to certify the person's gender identity based on a recommendation from a District Screening Committee, including medical professionals, a process that re-medicalized gender identity recognition and violated the self-identification principle established in NALSA.

The Transgender Persons (Protection of Rights) Rules, 2020, which were framed under the Act, introduced some modifications but retained significant barriers to legal gender recognition. The

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certification process is cumbersome, the institutional mechanisms for implementation are poorly resourced, and the protections provided by the Act against discrimination and violence are weakly enforced.

The Supreme Court's 2025 decision in Jane Kaushik v. Union of India went beyond simply providing relief to a single woman who had been wrongfully deprived of her livelihood, making a seismic shift in practice and the obligations on employers. The Court held that discrimination on the part of private employers that is gender identity-based "strikes at the heart of the constitutional guarantee of dignity and equality," finding that the Transgender Persons Act and its Rules had been "brutally rendered dead letters" by bureaucratic apathy. Citizens for Justice and Peace

The Court awarded damages and declared that employers must now make reasonable accommodation, borrowing from disability rights jurisprudence, covering everything that applies to transgender persons: recruitment forms, uniforms, leave policy, goodwill policy, and grievance procedures. Citizens for Justice and Peace The Jane Kaushik judgment represents an important step forward in holding the state accountable for its failure to implement the constitutional protections it has recognized, and in extending transgender rights from the public sector into private employment.

But the constitutional position of transgender persons in India remains far from the dignity and equality that the NALSA judgment promised. The reservation in public employment and education that NALSA directed has not been meaningfully implemented in most states. Violence against transgender persons, particularly hijra communities and kinnars, remains widespread and largely unpunished. Despite legislative and judicial reforms setting the tone for the inclusiveness of the LGBT+ community, the community is still battling hard in their quest for social upliftment, and their inclusion in the process of imparting justice might just bring a shift in the progressive thinking which is much needed to accord true sense of equality to these persons. PubMed Central

The constitutional gap between formal recognition and substantive equality for transgender persons is a paradigmatic example of the broader constitutional problem that runs through this textbook: the gap between the constitutional promise, generously formulated in judicial decisions, and the constitutional reality, persistently shaped by institutional indifference, social prejudice, and the absence of political will to deliver on constitutional commitments.

CHAPTER SIX: WOMEN IN POLITICAL POWER AND THE CONSTITUTIONAL DEFICIT OF REPRESENTATION

6.1 The Political Representation Crisis

Among the most significant constitutional failures affecting women in India is the failure of the democratic process to translate the formal equality of women's voting rights into meaningful political representation. Women constitute approximately 48 percent of the Indian electorate.

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They vote in large numbers, and in several recent elections their turnout has approached or exceeded that of men in particular constituencies. But their share of political representation, both in Parliament and in state assemblies, remains far below any standard of meaningful political equality.

As of 2024, only 14.7 percent of seats in the Indian Parliament were held by women, indicating a persistent gap in political representation. Dalvoy India ranks extremely poorly on measures of women's political representation compared with other large democracies, and its performance is far below the global average for parliamentary representation of women.

The constitutional history of women's political reservation reveals the extraordinary difficulty of achieving democratic equality through constitutional mechanism in a political system dominated by parties with structural interests in maintaining the current distribution of political power.

The Women's Reservation Bill, first introduced in the Lok Sabha in 1996, proposed to reserve 33 percent of seats in Parliament and state assemblies for women, through a system of rotation across constituencies. The bill was debated, introduced, withdrawn, and re-introduced multiple times over more than two decades without ever being enacted, because of persistent opposition within major political parties (including the Congress, the BJP, and regional parties) whose male politicians were unwilling to accept reserved constituencies that would require them to step aside.

The Constitution (One Hundred and Sixth Amendment) Act, 2023, the Women's Reservation Act, was finally enacted during the special session of Parliament in September 2023. It inserts Article 330A and Article 332A into the Constitution, reserving one-third of all seats in the Lok Sabha, state legislative assemblies, and the Delhi assembly for women. It also extends the existing reservation for women in Scheduled Caste and Scheduled Tribe reserved seats.

However, the 2023 Act contains a critical deferred implementation provision: the reservation will take effect only after the next delimitation exercise, and the delimitation exercise is constitutionally prohibited from taking place until the first census after the commencement of the Act. The 2021 Census was not conducted on time, and as of 2026 it remains unclear when it will be conducted. This means that women's political reservation in Parliament may not take effect for a decade or more, a deferral that critics describe as a political fraud: the enactment of a constitutional amendment that gives women the illusion of constitutional progress while ensuring that its practical benefits are postponed indefinitely.

The constitutional analysis of the women's reservation question is also complicated by the debate about whether reservation by constituency rotation is the most effective means of ensuring meaningful women's representation. Critics of the rotation system argue that it creates a category of "elected but temporary" women politicians whose influence is limited by the knowledge that they will be displaced at the next election, who cannot build the long-term constituency relationships and political careers that are necessary for genuine political effectiveness, and who are frequently fielded by political parties as tokens in constituencies that the party expects to lose rather than as serious candidates in winnable seats.

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Alternative models of women's political representation, including party-list proportional representation systems with gender parity requirements (used in Rwanda, New Zealand, and several European countries), are arguably more constitutionally effective in producing genuine women's political power. But these alternatives would require a fundamental change in India's electoral system, which is itself a constitutional question of great complexity.

6.2 Women in the Judiciary: The Diversity Deficit and Its Constitutional Consequences

The composition of the Indian judiciary is a constitutional question of substantive importance, not merely symbolic diversity. The social background, life experience, and perspective of judges shapes their interpretation of constitutional provisions, their understanding of the social contexts in which legal questions arise, and the constitutional vision that animates their decisions. A judiciary that is overwhelmingly male, predominantly from upper-caste and upper-class backgrounds, and educated in a narrow range of elite institutions is not well-positioned to understand or to adjudicate effectively on the constitutional claims of women, of Dalit and tribal communities, or of the poor.

With 276 judges appointed since India attained independence, the number of women judges in the Supreme Court has been relatively low at 11, representing an abysmal 4 percent of the total 276 judges. As of November 30, 2024, out of a total of thirty-four justices, the number of women had reduced to 2 from 3 following the retirement of a woman Justice in early September 2024. Women Justices make up only 13.76 percent of all sitting judges across High Courts. PubMed Central

These numbers are constitutionally significant for multiple reasons. The first is the most obvious: a court that is 96 percent male in its apex composition and 86 percent male in its High Court composition is not a court that reflects the constitutional principle of equality or the constitutional composition of the society it adjudicates for. The second is more subtle: the underrepresentation of women in the judiciary is a product of the same structural inequalities in legal education, professional access, and institutional culture that the Constitution is supposed to address. The fact that the legal profession and the judiciary remain so male-dominated after seventy-five years of constitutional equality provisions is evidence of the constitutional provisions' practical ineffectiveness.

The collegium system of judicial appointments, discussed in earlier parts of this textbook, is particularly problematic from the perspective of gender diversity. The collegium's appointment decisions are made by a small group of senior judges, predominantly male and upper-caste, whose selection criteria are informal, unstated, and not subject to public scrutiny. The informal networks through which judicial appointments are made in practice tend to favor those who are already integrated into the social worlds of senior judges, which means, as documented research has consistently shown, that appointments reflect the existing homogeneity of the bench in terms of gender, caste, regional background, and institutional affiliation.

The constitutional reform of judicial appointments is essential to addressing the diversity deficit. A transparent, merit-based appointments process with explicit requirements of attention to diversity, governed by a body that includes women's representatives, would be more likely to

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produce a judiciary that reflects the constitutional principle of equality. The political difficulty of achieving this reform, discussed in earlier parts of this textbook, is real, but the constitutional case for it is overwhelming.

CHAPTER SEVEN: CASTE, GENDER, AND THE DALIT WOMAN'S CONSTITUTIONAL PREDICAMENT

7.1 Intersectionality and the Double Burden

The constitutional situation of Dalit women in India illustrates with particular clarity the inadequacy of single-axis constitutional analysis. Analyzing Dalit women's constitutional position solely through the lens of gender underestimates the specific ways in which caste shapes the forms and severity of gender-based violence they experience. Analyzing it solely through the lens of caste underestimates the specific ways in which gender shapes their experience of caste-based discrimination. The constitutional framework's tendency to treat caste and gender as separate analytical categories, to be addressed through separate legal provisions (the reservation system for caste, the anti-discrimination provisions for gender), produces a conceptual gap in which the specifically intersectional experience of Dalit women falls through.

Kimberle Crenshaw's foundational articulation of intersectionality, though developed in the American context, applies with particular force to the Indian constitutional situation. The claim is not merely that Dalit women experience both caste discrimination and gender discrimination, but that the two forms of discrimination interact in ways that produce a distinctive configuration of harm that cannot be adequately understood or addressed by attending to either axis alone.

The sexual violence experienced by Dalit women at the hands of dominant-caste men is not merely gender-based violence that happens to the victim who is also Dalit. It is a specifically casteist form of gender violence, in which the violation of the woman's body is a mechanism of asserting caste hierarchy, of punishing resistance to caste norms, and of maintaining the social order of purity and pollution through the violation of the polluted woman's body. The constitutional framework of the Atrocities Act recognizes this dimension of caste-based sexual violence, but the Act's ineffective implementation means that this recognition remains largely formal.

The Hathras case of 2020, in which a 19-year-old Dalit woman was gang-raped and murdered by dominant-caste men in Hathras district of Uttar Pradesh, exposed the full constitutional scandal of Dalit women's vulnerability. The police's initial refusal to register the case, the burning of the victim's body by police officials in the middle of the night without the family's consent (an action that appeared designed to destroy forensic evidence), the subsequent arrest and detention of her family members, the state government's deployment of police to prevent journalists and opposition politicians from visiting the family, and the filing of charges against journalists and activists who reported on the case under the Unlawful Activities (Prevention) Act, these were not individual acts of official misconduct. They were the systematic application of state power to

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protect the perpetrators of caste-based sexual violence and to punish the pursuit of accountability.

The constitutional response to the Hathras case was deeply inadequate. The Supreme Court took suo motu cognizance of the case and monitored proceedings, but the ultimate judicial outcome was deeply unsatisfying: the acquittal of the accused in 2021 by a district court, followed by an appeal that remains in the system. The High Court, while criticizing the police's conduct in burning the body, did not find any constitutional violation sufficient to warrant extraordinary relief. The pattern of the Hathras case, state complicity in caste-based sexual violence against Dalit women, inadequate criminal investigation and prosecution, and the use of state power to suppress accountability, is not exceptional. It is the norm.

7.2 Manual Scavenging, Caste Labor, and the Constitutional Prohibition of Dignity

The practice of manual scavenging, the manual removal of human excreta from dry latrines and sewer lines, is among the most constitutionally offensive practices that continues in independent India. It is a practice that is imposed almost exclusively on Dalit communities, it involves extreme degradation and physical danger, it violates the most basic standards of human dignity, it has been prohibited by law since 1993, and it continues on a massive scale.

The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 strengthened the legal prohibition and required the rehabilitation of persons released from manual scavenging. The Supreme Court has repeatedly affirmed the constitutional obligation to end the practice. In January 2025, the Supreme Court ordered a stringent ban on manual scavenging and manual sewer cleaning in six metro cities, in response to a petition seeking complete eradication of the practice, recognizing the state's continued failure to protect Dalit and other marginalized workers from lethal workplace conditions. Feminism in India

But manual scavenging persists because it is embedded in caste hierarchy in ways that legal prohibition alone cannot address. The communities that perform manual scavenging do so not because they chose the work but because they are born into a caste that has historically been assigned this degrading labor, and because the economic structures of their communities provide no alternative. The legal prohibition, without adequate rehabilitation programs, without alternative employment opportunities, without the dismantling of the social structures that confine people to caste-assigned occupations, is a prohibition that changes the formal legal status of the practice without changing the material reality.

The constitutional failure here is multiple. The state has failed to implement the legal prohibition. The state has failed to provide adequate rehabilitation. The state has failed to address the structural economic conditions that make manual scavenging persist. And the state has failed to address the broader caste system that assigns Dalit communities to this degrading work in the first place. Each of these failures is a constitutional failure, and together they constitute a constitutional offense against the dignity of hundreds of thousands of people who continue to live in the shadow of a constitutional republic that promised them liberation and has delivered them continued degradation.

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The women of manual scavenging communities bear a particularly heavy burden. The practice of dry latrine cleaning has been performed predominantly by women, who carry baskets of human waste on their heads. Women in sewer cleaning communities lose family members to asphyxiation in sewers that are entered without protective equipment. The intersection of Dalit identity, gender, and caste-assigned degrading labor creates a constitutional condition of multiply compounded vulnerability that the Constitution promised to end and has not ended.

CHAPTER EIGHT: THE UNIFORM CIVIL CODE DEBATE IN 2024-2026 PERSPECTIVE

8.1 The BJP's UCC and the Feminist Critique

The political salience of the Uniform Civil Code reached new heights in 2024 and 2025, with the Uttarakhand UCC being operationalized, with several other BJP-governed states indicating their intention to follow suit, and with the central government signaling that a national UCC remains a political priority. This renewed political momentum for the UCC makes a clear-eyed constitutional analysis of the feminist case for and against the specific form of UCC being proposed more urgent than ever.

The feminist case for a Uniform Civil Code, as articulated by the women's rights movements of the mid-twentieth century, was rooted in the recognition that all religious personal law systems in India were patriarchal, that the constitutional promise of equality between men and women in family law required the replacement of these systems with a single secular code that treated all citizens equally regardless of their religious identity. This was the position of Ambedkar, who argued that personal law was the primary instrument of women's subjugation and that the failure to enact a Uniform Civil Code was the Constitution's most significant betrayal of its own equality principles.

But the feminist case for a UCC must be distinguished from the BJP's political UCC agenda, which has been criticized by feminist scholars as instrumentalizing the language of gender equality in the service of anti-Muslim nationalism. The Uttarakhand UCC of 2024, far from representing a comprehensive feminist reform of family law, focuses heavily on the regulation of Muslim marriage practices, while not systematically addressing inequalities in Hindu personal law. It is not a secular, gender-equal family code. It is, in substance, an extension of Hindu family law norms to Muslim citizens, dressed in the language of uniformity.

A genuinely feminist UCC would require equal treatment of men and women in marriage and divorce across all communities, with easy and equal access to divorce, fair division of matrimonial property on dissolution of marriage, equal custody rights for mothers and fathers, and maintenance adequate to ensure economic security for women who have made non-monetized contributions to the household during marriage. It would need to address the specific disadvantages of Muslim women under the Shariat-based inheritance system, of Hindu women in regions where the 2005 amendment to the Hindu Succession Act has not effectively changed the practice of excluding daughters from agricultural land inheritance, of Christian women under

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outdated divorce law provisions, and of tribal women whose customary land rights are inadequately protected.

Such a UCC would be deeply threatening to patriarchal structures across all religious communities. The political reality is that no UCC that genuinely served women's constitutional equality interests would command the support of the religious and community leadership structures that have been the primary political clients of the parties currently promoting the UCC. The UCC that is actually being promoted is one that uses the language of gender equality to mask a project of cultural homogenization that serves Hindu majoritarian political objectives while doing relatively little for the women in whose name it is promoted.

8.2 Personal Law, Community Identity, and the Constitutional Tension

The constitutional tension between the equality provisions of the fundamental rights chapter and the protection of cultural and religious identity also guaranteed by the Constitution is one of the most difficult theoretical problems in Indian constitutional law. The Constitution simultaneously guarantees equality between men and women (Article 15), protects the right of religious and linguistic minorities to conserve their culture and to manage their own religious institutions (Articles 29 and 30), and directs the state to secure a uniform civil code (Article 44). These provisions are not fully consistent with each other, and the resolution of their tension has been the subject of intense political and legal debate throughout the history of the Constitution.

The theoretical framework of constitutional pluralism, developed in the European context by scholars including Neil MacCormick and Mattias Kumm, offers one approach to this tension. Constitutional pluralism recognizes that constitutional legitimacy may come from multiple sources, that the state constitutional order is not the only relevant source of normative authority, and that the relationship between the state constitutional order and other normative systems, including religious and customary law systems, should be understood as one of principled interaction rather than hierarchical supremacy.

Applied to the Indian context, constitutional pluralism would suggest an approach to personal law reform that respects the diversity of India's religious and cultural traditions while insisting that all personal law systems comply with the minimum constitutional standards of gender equality and individual dignity. This approach, sometimes described as "equality within diversity," would permit the continuation of distinct personal law systems for different communities, but would require all of these systems to provide women with equal rights to divorce, to inheritance, to maintenance, and to freedom from violence, as a condition of their constitutional validity.

This is not the approach that the current political discourse has taken. The UCC debate has been framed as a binary choice between maintaining existing personal law systems (defended by Muslim and Christian community organizations, often in terms that elide the feminist critique of those systems) and imposing a uniform code (advocated by the BJP in terms that are often explicitly anti-Muslim). Neither position takes seriously the feminist constitutional case for genuine equality within personal law systems or the possibility of a reform process that is

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genuinely participatory, including the voices of women from all communities in the redesign of the laws that govern their lives.

CHAPTER NINE: THE CONSTITUTIONAL POLITICS OF GENDER IN THE AGE OF DIGITAL SURVEILLANCE AND ONLINE HARM

9.1 Technology, Gender-Based Violence, and the Constitutional Response

The digital revolution of the past two decades has created new dimensions of gender-based violence that the Indian constitutional framework has been slow to address. Online harassment, non-consensual sharing of intimate images (sometimes called "revenge pornography"), digital stalking, and technology-facilitated trafficking are forms of gender-based violence that exploit the affordances of digital technology to inflict harm that can be as severe as, and often more pervasive and persistent than, physical violence.

The constitutional status of these harms is theoretically clear: they violate the constitutional right to dignity, privacy, and bodily integrity under Article 21, and the right to equality under Article 14. The Privacy judgment of 2017 explicitly recognized digital privacy as a dimension of the constitutional right to privacy, and the Digital Personal Data Protection Act, 2023 provides some legislative framework for data protection. But the specific regulation of online gender-based violence has been inadequate and fragmented.

The Information Technology Act, 2000 and its subsequent amendments created criminal offenses for certain categories of online harm, including Section 66A (which was struck down by the Supreme Court in Shreya Singhal v. Union of India, 2015, as unconstitutionally vague), Section 66E (violation of privacy), and Section 67 (publishing obscene material online). The Protection of Children from Sexual Offences (POCSO) Act, 2012 addresses online sexual exploitation of children. But the coverage of these provisions is fragmented and the enforcement is poor.

The specific harm of non-consensual intimate image sharing (NCII) has gained legislative attention only recently. Several countries, including the United Kingdom, Australia, and Scotland, have enacted specific legislation criminalizing NCII. India has not done so at the national level, though some state police departments have created specialized cyber cells to deal with NCII complaints. The absence of comprehensive national legislation on NCII is a constitutional deficit in the protection of women's dignity and privacy in the digital sphere.

The intersection of digital technology and political violence against women has been another area of constitutional concern. Women politicians, journalists, and public figures in India are subject to intense campaigns of online abuse, including threats of sexual violence, that are designed to deter women from public participation and to enforce informal norms of gender hierarchy in public discourse. Research by organizations including Amnesty International has documented the scale and severity of online abuse experienced by women public figures, and has identified significant failures of law enforcement in responding to such abuse.

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The constitutional dimension of this problem is clear: online harassment campaigns designed to silence women's political participation are violations of women's right to equal participation in public life, their right to freedom of speech, and their right to dignity. The state's failure to effectively address these violations is a constitutional failure that reflects the broader pattern of inadequate enforcement of constitutional protections for women in the face of patriarchal social pressure.

9.2 Surveillance, Privacy, and Women's Rights

The expansion of state surveillance capabilities, documented in earlier parts of this textbook, has particular implications for women's constitutional rights. Surveillance of digital communications, location tracking, and the aggregation of personal data by both state agencies and private actors creates specific risks for women who are in dangerous situations: women who are trying to leave violent marriages may have their location tracked by abusive partners using spyware; women who are organizing against gender-based violence may have their communications monitored by state agencies that are sympathetic to the political interests of their opponents; women who are seeking information about reproductive health services in contexts where those services are politically contested may have their digital footprints used to identify and target them.

The Digital Personal Data Protection Act, 2023 has been widely criticized for the breadth of the exemptions it grants to the state from its own data protection requirements. The Act exempts the state from data protection obligations when it determines that such exemption is "necessary or expedient" for national security, public order, or certain other grounds. This broad exemption leaves women, and all citizens, without adequate constitutional protection against state surveillance.

The feminist constitutional argument in the digital privacy domain is that the right to privacy, recognized in the Puttaswamy case, must be understood in its gender dimension: that women have specific privacy interests, related to their safety, their autonomy, and their freedom from surveillance by abusive partners and by a patriarchal state, that must be constitutionally protected through both the negative obligation of the state to refrain from surveillance and the positive obligation to regulate private surveillance technologies.

CHAPTER TEN: THE FEMINIST CONSTITUTIONAL REFORM AGENDA: THEORIES, MODELS, AND THE SHAPE OF JUSTICE

10.1 What a Feminist Constitution Would Look Like

The accumulated analysis of the preceding chapters of this part makes clear that the Indian Constitution's failure to deliver constitutional justice to women is not a marginal or correctable failure of implementation. It is a structural failure that runs from the constitutional text through its interpretation and through its institutional enforcement. A genuinely feminist constitutional reform would require changes at all three levels.

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At the level of constitutional text, a feminist constitutional reform would require several foundational additions and modifications. The explicit constitutional prohibition of domestic violence as a violation of women's constitutional rights, removing it from the "private sphere" in which it has been constitutionally invisible. The explicit constitutional right to reproductive autonomy, recognizing women's right to make decisions about their own bodies, including the decision to carry or terminate a pregnancy, as a fundamental constitutional right grounded in bodily integrity and autonomy rather than merely as a medical decision requiring external authorization. The explicit constitutional prohibition of marital rape, inserting in the fundamental rights chapter the principle that no marriage contract can constitute irrevocable consent to sexual intercourse and that sexual violence within marriage is as constitutionally serious as sexual violence outside it.

The explicit constitutional guarantee of equal rights in marriage, divorce, custody, and inheritance regardless of religious identity, with the state's constitutional obligation to enact a genuinely gender-equal family code that protects women equally across all religious communities. The explicit constitutional guarantee of women's political representation at levels that ensure genuine equality of political voice, with constitutional machinery to ensure that this guarantee is enforceable rather than merely aspirational.

At the level of constitutional interpretation, a feminist constitutional reform would require the development of a doctrine of substantive equality that goes beyond formal anti-discrimination to address the structural conditions that produce gender inequality. The South African Constitutional Court's jurisprudence of "dignity-based equality," which assesses equality claims not merely by asking whether a distinction is formally discriminatory but by asking whether it diminishes the dignity and equal worth of the affected group, offers a valuable model. The Colombian Constitutional Court's intersectional approach to the equality rights of multiply marginalized groups, including women from indigenous communities, offers another.

The development of these doctrines in India would require a judiciary that is more representative of the social diversity of Indian women's experience than the current collegium-appointed bench. It would require judicial education that takes feminist legal theory seriously as a constitutional resource. And it would require a legal culture that understands judicial reasoning in constitutional equality cases not as a technical exercise in the application of existing doctrine but as an ongoing participation in the constitutional project of social transformation.

At the level of constitutional institutions, a feminist constitutional reform would require the creation of specialized constitutional mechanisms for enforcing gender equality, including a Gender Equality Commission with investigative and enforcement powers, a network of specialized courts for gender-based violence cases staffed by trained judges with adequate resources, and a constitutionally grounded legal aid system that ensures all women can access constitutional remedies regardless of their economic resources.

10.2 Feminist Jurisprudence and the Reconstruction of Constitutional Theory

The project of feminist constitutional reform in India is not only a practical project of institutional redesign. It is a theoretical project of constitutional reconstruction, of rethinking the

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foundational assumptions of constitutional theory in ways that take women's experience and women's interests as central rather than peripheral.

The foundational assumptions of the liberal constitutional tradition, the abstract individual rights-bearer, the public-private distinction, the neutrality of constitutional principles with respect to social positions, the majoritarian democratic premise that legitimate constitutional decisions emerge from the preferences of the majority, these are assumptions that feminist constitutional theory has subjected to sustained critique. The reconstruction of Indian constitutional theory on feminist foundations would require taking these critiques seriously not merely as academic exercises but as constitutional commitments.

The abstract individual rights-bearer of liberal constitutional theory is gendered: she is, in her default version, male, able-bodied, economically independent, and unencumbered by the caring responsibilities that constitute the core of most women's lives. Constitutional rights that are designed for this abstract individual will not adequately protect women whose constitutional experience is shaped by their embodiment, their economic dependence, their caring responsibilities, and the specific forms of violence and domination that target them because of their gender.

A feminist constitutional theory must be grounded in the concrete reality of women's lives, in the forms of harm that women actually experience, in the institutional and social arrangements that produce and sustain those harms, and in the constitutional remedies that would address them. This means attending to domestic violence rather than treating the home as a constitutional-free zone. It means attending to reproductive violence rather than treating the body as exclusively subject to the woman's formal legal rights in the face of a society that systemically overrides those rights. It means attending to the economic structures of gender subordination rather than treating the market as a neutral sphere where equal formal rights produce equal outcomes.

The jurisprudential foundations of this feminist constitutional reconstruction are available in the body of feminist legal theory that has been developed over the past four decades by scholars from MacKinnon and West to Fineman and Lacey to Menon and Kapur. The application of these foundations to the specific constitutional materials of the Indian system, with its particular configuration of caste, class, religion, and region, is the intellectual work that a generation of Indian feminist constitutional scholars is engaged in, and whose fruits are beginning to be visible in the most sophisticated recent constitutional adjudication.

10.3 The Feminist Constitutional Moment: Connections, Convergences, and the Coalition of the Constitutionally Excluded

The feminist constitutional reform project in India does not stand alone. It is part of a broader coalition of constitutional reform that connects the struggle for gender justice with the struggle for caste justice, for tribal rights, for the rights of religious minorities, for LGBTQ+ equality, for workers' rights, and for the rights of the poor to genuine access to constitutional justice. These struggles are distinct in their specific content but connected in their common challenge to the structural inequalities that the Indian constitutional order has permitted and, in many cases, reinforced.

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The connection between feminist and Dalit constitutional politics is particularly important. The Dalit feminist tradition, represented by the work of Uma Chakravarti, Sharmila Rege, Gopal Guru, and the organizations of Dalit women, insists that the constitutional project of gender justice cannot be separated from the constitutional project of caste abolition. The forms of gender violence that Dalit women experience are specifically casteist. The economic marginalization of Dalit women is specifically caste-based. The constitutional mechanisms that are most needed to address the situation of Dalit women are those that simultaneously address caste hierarchy and gender subordination, in their intersection rather than as separate problems.

The connection between feminist and LGBTQ+ constitutional politics is similarly important. The heteronormative assumptions of the family law system, the constitutional definition of marriage as a heterosexual institution, and the legal framework of gender recognition all rest on a binary conception of gender that is challenged by both feminist and transgender theorists. The constitutional project of gender justice requires a conception of gender that is not binary, not fixed, and not defined by a single dominant community's norms, a conception that the developing constitutional jurisprudence on transgender rights is beginning to articulate.

The connection between feminist and workers' rights constitutional politics is important for the vast majority of Indian women who are poor and who experience gender inequality not merely as social discrimination but as economic deprivation. The constitutional right to equal pay for equal work (Article 39(d), a Directive Principle) has been ineffective in addressing the wage gap between men and women in the informal economy. The constitutional protection of maternity rights is inadequate for the majority of working women who are in informal employment and have no employer relationship through which maternity rights can be enforced. The constitutional project of gender economic justice requires constitutional mechanisms that extend workers' rights, including gender-specific rights, into the informal economy where the majority of women work.

The coalition of the constitutionally excluded, those whose formal constitutional rights have not been delivered into their actual lives, is the political base for genuine constitutional reform in India. This coalition is diverse, dispersed, and not always internally coherent. But it represents the majority of the Indian people: women, Dalits, adivasis, religious minorities, LGBTQ+ persons, informal workers, the rural poor, and all those who live at the intersection of multiple forms of marginalization. If constitutional reform is to serve the interests of this majority rather than the interests of the privileged minority that has historically dominated constitutional discourse, it must be driven by the organized political will of the constitutionally excluded themselves.

This is the feminist constitutional vision: not merely the addition of women's rights to an existing constitutional framework designed for men, but the reconstruction of the constitutional framework from the perspective of those whose experience has been most thoroughly excluded from its design. Such a reconstruction would not merely benefit women. It would produce a constitutional order that is more genuinely democratic, more truly equal, and more fully responsive to the actual diversity of human experience than anything yet achieved in the seventy-five years of the Indian Republic.

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CHAPTER ELEVEN: THE CONSTITUTIONAL FUTURE OF GENDER JUSTICE IN INDIA: ASSESSMENTS, IMPERATIVES, AND THE UNFINISHED WORK

11.1 Stocktaking: What Has Been Achieved and What Has Not

Any honest assessment of the constitutional trajectory of gender justice in India must acknowledge both the real achievements of the past seventy-five years and the profound inadequacies that remain.

On the achievement side, the story begins with formal constitutional equality, which, while insufficient, is not nothing. The formal prohibition of sex discrimination in Articles 14 and 15, the formal equality of political participation, the formal constitutional commitment to women's rights, these create a legal language, a constitutional vocabulary, and a set of institutional tools that women's movements have been able to use creatively and often effectively to advance their interests. The development of constitutional jurisprudence from the Mathura case outcry to the Vishaka guidelines to the Navtej decriminalization to the Puttaswamy privacy right represents a genuine constitutional trajectory, however uneven and incomplete, toward the recognition of women as full constitutional persons.

The legislative achievements enabled by feminist constitutional advocacy include the Protection of Women from Domestic Violence Act, the POSH Act, the MTP Act amendments, the Criminal Law Amendment of 2013, the Hindu Succession Act amendment of 2005, the Protection of Children from Sexual Offences Act, the Maternity Benefit Act amendment of 2017 extending paid maternity leave to 26 weeks, and the Prohibition of Manual Scavenging Act. These are real legislative victories, achieved through sustained feminist advocacy operating on the formal constitutional process.

The expansion of constitutional rights jurisprudence through the reading of multiple rights into Article 21 has produced a body of constitutional precedent that, while not uniformly consistent or effectively enforced, provides tools for constitutional advocacy on women's issues that are stronger than the text alone would suggest. The Supreme Court's recent decisions on marital rape (the 2022 Delhi High Court split judgment awaiting Supreme Court resolution), on abortion rights for unmarried women, on transgender workplace rights, on manual scavenging prohibition, and on women's rights in live-in relationships represent a continuing, if uneven, constitutional development in the direction of gender justice.

On the inadequacy side, the failures are structural and persistent. The marital rape exception continues to protect sexual violence within marriage. Women's political representation remains far below equality. Women's economic independence and property rights remain deeply unequal in practice despite formal legal reforms. The institutions responsible for enforcing women's constitutional rights, the police, the courts, the protection officers, the ICC mechanisms, remain deeply inadequate in their performance. The personal law systems continue to govern family life in ways that systematically disadvantage women. The intersecting disadvantages of gender, caste, and poverty remain largely unaddressed by the constitutional framework.

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The constitutional situation of women in India in 2026 can be described as one of constitutionally recognized formal equality, substantial judicial creativity in expanding the content of constitutional rights, political mobilization that has achieved significant legislative reforms, and persistent structural institutional failure in the delivery of constitutional justice to the majority of Indian women, particularly those who are poor, lower-caste, from religious minorities, or in rural and tribal areas.

11.2 The Scale of the Constitutional Deficit: A Quantitative Reckoning

The constitutional deficit of gender justice in India can be measured not only through constitutional analysis but through the empirical data that reveals the distance between constitutional aspiration and social reality.

India ranks 129 out of 146 countries on the World Economic Forum's Global Gender Gap Index 2024, a performance that places it in the bottom quartile of the world's nations on gender equality. On the economic participation and opportunity sub-index, India ranks near the bottom globally, reflecting the extremely low female labor force participation rate of approximately 23 percent (compared with a global average of approximately 47 percent and rates of 60 to 80 percent in many developed economies). On the health and survival sub-index, India performs extremely poorly on the secondary sex ratio (the ratio of girls to boys surviving), reflecting the persistence of sex-selective abortion and female infanticide despite their legal prohibition. On the political empowerment sub-index, India's performance is limited by the very low proportion of women in Parliament discussed earlier.

The National Family Health Survey (NFHS-5, 2019-2021) reveals that 30 percent of ever-married women in India have experienced physical violence since the age of 15, and 6 percent have experienced sexual violence. These figures, which represent only reported and acknowledged violence, significantly underestimate the actual prevalence. Approximately 57 percent of married men surveyed in NFHS-5 who had committed violence against their wives considered their behavior justified for at least one specified reason, which reveals the depth of attitudinal barriers to the effective implementation of constitutional protections against domestic violence.

Women's ownership of land and property, the most fundamental measure of economic independence, remains extremely low: NFHS-5 data shows that only approximately 43 percent of women own a house (solely or jointly), and only approximately 15 percent own land. Given that India is a predominantly agricultural economy in which land is the primary productive asset, the systematic exclusion of most women from land ownership represents a constitutional failure of economic equality of the first magnitude.

The conviction rate in rape cases was approximately 28 percent as of 2023 NCRB data, meaning that approximately 72 percent of prosecuted rape cases result in acquittal. Given the already significant underreporting, the low FIR registration rate, and the significant attrition in cases between complaint and prosecution, the proportion of rape incidents that result in conviction for the perpetrator is a tiny fraction of the total, representing a systematic failure of constitutional protection against sexual violence.

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These numbers are not incidental to the constitutional analysis. They are the constitutional analysis. They measure, in concrete human terms, the distance between what the Constitution promises and what it delivers. A constitutional order that promises equality and delivers these numbers has failed in its most fundamental mission.

11.3 The International Dimension: CEDAW, Beijing, and the Constitutional Obligations India Has Not Met

India's international commitments on gender equality create constitutional obligations that the domestic constitutional framework has been largely inadequate to meet.

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which India ratified in 1993, requires state parties to take all appropriate measures to eliminate discrimination against women in all spheres of life, including by abolishing existing laws, regulations, customs, and practices which constitute discrimination against women, and to enact appropriate legislation to prohibit all discrimination against women. India's reservations to several articles of CEDAW, including the reservation to Article 16 on equality in marriage and family life on the ground that this would be contrary to personal law, represent a formal acknowledgment that the domestic constitutional framework does not comply with international standards of gender equality.

The Beijing Platform for Action (1995) and subsequent UN World Conferences on Women have established international standards on the twelve critical areas of concern for women's rights, including poverty, education, health, violence, armed conflict, economic participation, decision-making, institutional mechanisms, human rights, media, environment, and the girl-child. India's progress against these standards, while real in some areas, remains deeply inadequate in most.

The Sustainable Development Goals (SDGs), to which India is committed under the 2030 Agenda, include SDG 5 on Gender Equality and SDG 10 on Reduced Inequalities, both of which have direct constitutional dimensions. India's progress toward SDG 5 on most indicators is insufficient to meet the 2030 targets.

The gap between India's international commitments on gender equality and its domestic constitutional performance is not merely a matter of international relations. It is a constitutional problem, because it reveals the state's unwillingness or inability to translate its own expressed values, as reflected in its international commitments, into the institutional reality of women's lives. A constitutional order committed to the values that India has committed to internationally would look very different from the constitutional order that actually exists.

11.4 Conclusion: The Unfinished Feminist Revolution and the Constitutional Horizon

The feminist revolution promised by the Indian Constitution has not been completed. It has not even been adequately begun in many of the domains that matter most for the majority of Indian women. The formal constitutional commitment to gender equality, real as it is, has not been translated into the social, economic, and institutional reality of women's lives.

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The constitutional reform agenda articulated in this part is extensive, but it can be summarized around a few core principles.

First, the principle of substantive equality: the constitutional framework must move beyond formal anti-discrimination to address the structural conditions that produce gender inequality, including the economic structures of women's dependence, the institutional cultures of patriarchy in the police and courts, the personal law systems that encode gender hierarchy in family life, and the political structures that systematically exclude women from power.

Second, the principle of intersectional justice: the constitutional framework must recognize and address the ways in which gender inequality intersects with caste, class, religion, disability, and other axes of social hierarchy to produce specifically configured forms of disadvantage for women at the intersection of multiple marginalized identities.

Third, the principle of institutional transformation: the constitutional commitment to gender equality must be operationalized through institutional transformation, not merely through the expansion of formal legal rights. This means transforming the police into a force that protects rather than victimizes women, transforming the courts into institutions that deliver justice to women in reasonable timeframes without retraumatization, transforming the legal profession into one that is accessible to all women regardless of economic resources, and transforming the political process into one that includes women's voices in proportion to their share of the population.

Fourth, the principle of participatory constitutional design: any constitutional reform aimed at advancing gender justice must be designed with the genuine participation of the women whose lives it will affect, particularly those who have been most excluded from constitutional governance. A feminist constitution cannot be written for women; it must be written by women, in all their diversity.

The feminist constitutional horizon for India is ambitious. It requires nothing less than the reconstruction of the constitutional order from the perspective of those who have been most thoroughly excluded from its design and most systematically failed by its operation. This is not a modest reform agenda. It is a revolutionary one.

But revolutions are not always dramatic ruptures. Sometimes they are the accumulation of many small acts of constitutional courage: a judge who refuses to apply the two-finger test, a police officer who registers the FIR, a lawyer who takes a Dalit woman's case on legal aid, a legislator who votes against the marital rape exception, a citizen who insists on her constitutional rights. The feminist constitutional revolution in India is made of these acts, multiplied across the vast and diverse landscape of Indian society, and it is the responsibility of everyone who understands the Constitution's promise to contribute to making that promise real.

The Constitution says "We, the People of India." The feminist constitutional demand is that this "We" be genuine: that it include the Dalit woman in Hathras, the Muslim widow in Bhopal, the transgender worker in Hyderabad, the tribal woman in the forests of Jharkhand, and all the

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hundreds of millions of women whose lives and voices have been constitutionally promised justice and who are still waiting for it to arrive.

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The feminist legal scholarship of the following contemporary Indian scholars has been particularly significant to the analysis in this Part: Flavia Agnes, Usha Ramanathan, Mrinal Satish, Namita Wahi, Supriya Routh, Pratiksha Baxi, Jhuma Sen, Aparna Chandra, Saumya Uma, Kamayani Bali Mahabal, Vrinda Grover, Indira Jaising, and the team of Lawyers Collective.

All arguments made in this textbook are the author's own and do not necessarily represent the views of any individual scholar or organization cited.

End of Part Ten.

Part Eleven will examine: The Constitutional Economy of Inequality: Property, Land, Labour, and the Structural Impoverishment of the Majority in the Indian Constitutional Order.

PART ELEVEN: THE REPUBLIC OF BROKEN PROMISES

Constitutional Corruption, Systemic Victimhood, Nationalist Capture, and the Jurisprudential Case for Total Constitutional Reconstruction

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PREFACE TO PART ELEVEN

Every serious engagement with the Indian Constitution must eventually arrive at the question this Part places at its center: not what the Constitution says, but what it has done and what it continues to do to the people who live under it. The intellectual movement from textual analysis to structural critique to social consequence is not a detour from constitutional scholarship. It is constitutional scholarship at its most honest.

The preceding ten Parts of this textbook have examined the colonial origins of the document, the structural architecture of executive supremacy, the failure of federalism, the class character of

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fundamental rights enforcement, the Emergency and its aftermath, the judiciary's institutional contradictions, the police state in constitutional disguise, the political economy of corruption, the philosophical inheritance of constitutional thought, and the growing authoritarianism of the post-2014 political order. These are not separate problems. They are facets of a single systemic failure that this Part names with precision: the Indian Constitution has not delivered the republic it promised. It has, in substantial and documentable measure, delivered a republic of broken promises, and the breaking of those promises has been systematic, structural, and relentless.

Part Eleven develops this argument across ten chapters. It begins with a jurisprudential analysis of how the Constitution itself institutionalized the conditions for corruption and rent-seeking. It moves to a sociological and legal analysis of how ordinary citizens have been victimized rather than protected by the constitutional order. It then examines the specific mechanisms of nationalist capture, the engineering of electoral autocracy through the One Nation One Election project, the collapse of secular constitutionalism, the modern constitutional colonialism of laws like the Unlawful Activities Prevention Act, the class structure of constitutional economics, the executive supremacy crisis of 2024-2026, the emerging constitutional framework of digital authoritarianism, and finally, the theoretical, comparative, and jurisprudential foundations of the case for total constitutional reconstruction.

This Part draws on the most recent developments in constitutional law, comparative constitutional theory, democratic theory, and international human rights law, including the V-Dem Democracy Report 2025, the Freedom House assessments of 2024 and 2025, the Supreme Court's landmark and deeply problematic rulings of 2023 through 2025, the Constitution (129th Amendment) Bill of 2024 on simultaneous elections, the Constitution (130th Amendment) Bill of 2025 on ministerial disqualification, the Digital Personal Data Protection Rules of 2025, and the continuing consequences of the Waqf (Amendment) Act of 2025. These are not merely current affairs. They are evidence in the jurisprudential case that Part Eleven is building: evidence that the constitutional order is not gradually improving toward its own aspirations but is being systematically redirected away from them.

The language of this Part is deliberately charged, because the subject demands it. Constitutional scholarship that speaks in the passive voice about "challenges" and "concerns" when citizens are being imprisoned without trial, dispossessed of their land, stripped of their citizenship, and silenced by laws inherited from their colonial oppressors is a form of intellectual complicity. The tradition of critical legal studies, as developed by Roberto Unger, Duncan Kennedy, Mark Tushnet, and their Indian interlocutors including Upendra Baxi, Rajeev Dhavan, and Usha Ramanathan, demands that legal scholarship acknowledge the power structures that law serves and serves to conceal. Part Eleven operates in that tradition.

CHAPTER ONE: THE CONSTITUTIONAL ECONOMY OF CORRUPTION

HOW THE DOCUMENT INSTITUTIONALIZED RENT-SEEKING AND SYSTEMATIC LOOTING

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1.1 The Jurisprudential Definition of Constitutional Corruption

Constitutional corruption, as a jurisprudential concept, is distinct from ordinary corruption in the everyday sense of bribery, nepotism, and misappropriation of public funds. Those forms of corruption are real and devastating in India, as we shall document extensively. But constitutional corruption refers to something deeper and more foundational: the structural arrangement of constitutional institutions, powers, and relationships in ways that systematically create incentives for corrupt conduct, that make corrupt outcomes more likely than clean ones, and that insulate corrupt conduct from accountability. Constitutional corruption is corruption that is, in a meaningful sense, built into the system.

The distinction was drawn with theoretical precision by Zephyr Teachout in her 2014 work on corruption in the American constitutional tradition, where she argued that the founding generation understood corruption not merely as a discrete act of bribery but as a systemic tendency of political institutions to serve private interests rather than public ones. This broader understanding of corruption, as the perversion of public institutions from their public purpose to private benefit, is the understanding that must inform any serious constitutional analysis of India.

India's constitutional order, when examined through this lens, reveals a document that has generated extraordinary levels of systemic corruption not despite its provisions but in significant measure because of them. The mechanisms of this constitutionally structured corruption are multiple, interconnected, and mutually reinforcing.

1.2 The License Raj and Constitutional Discretion

The first and perhaps most foundational mechanism of constitutional corruption in India is the extraordinarily broad grant of discretionary administrative power that the Constitution authorizes through its provisions on legislative power. The Union List and the State List between them authorize Parliament and state legislatures to regulate virtually every aspect of economic life. The industrial licensing regime, the foreign exchange regulations, the import licensing system, the land acquisition powers, the forest clearance requirements, the environmental approval processes, the building permits, the business registrations, all of these are exercises of constitutionally authorized regulatory power.

But regulatory power is, in the well-known formulation of James Q. Wilson, also license-giving power: the power to say yes to some and no to others in the exercise of a discretion that is rarely subject to clear, transparent, judicially reviewable criteria. When the Constitution grants Parliament and state legislatures broad regulatory power without requiring that the power be exercised through transparent, rule-bound, contestable administrative processes, it creates the structural conditions for corruption. The official who can decide whether your factory gets its license, whether your import is cleared, whether your land acquisition is approved, whether your environmental clearance is granted, holds enormous power. In a system where that power is exercised through discretionary administrative processes with limited accountability, the incentive to convert that power into personal gain is irresistible for many.

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The License Raj of the first four decades of independent India, which was the administrative embodiment of the constitutional model of centralized state economic regulation, was not merely a policy failure. It was a constitutional corruption machine of extraordinary efficiency. The economist Jagdish Bhagwati's analysis of the system documented how the elaborate licensing apparatus created systematic rent-seeking opportunities at every level of the administrative hierarchy, from the junior official who approved a registration to the minister who signed a major industrial license.

The partial economic liberalization of 1991, which dismantled some of the most egregious licensing requirements, reduced some forms of rent-seeking at the Union government level. But it did not eliminate the constitutional structure that generates rent-seeking. The states retain enormous regulatory powers over land use, construction, environmental approvals, liquor licenses, and hundreds of other matters that remain heavily discretionary. New regulatory domains, particularly in the digital economy, have created new opportunities for discretionary regulation that has generated new forms of rent-seeking. The constitutional grant of broad regulatory power without constitutionalized requirements of transparent, accountable, and rule-bound administration remains a machine for generating corruption.

1.3 The Anti-Defection Law and the Market for Political Loyalty

The Tenth Schedule of the Constitution, the anti-defection law added by the Fifty-Second Amendment in 1985, was presented as a remedy for the problem of legislative instability caused by the frequent defection of legislators from one party to another in pursuit of personal benefit. The problem it was addressing was real: the phenomenon of the "aaya ram, gaya ram" legislator (a phrase coined from a Haryana legislator who changed parties three times in a single day in 1967) had made several state assemblies ungovernable. The intent to prevent this was genuine.

But the Tenth Schedule, by making legislators legally accountable to their party leadership rather than to their constituents, has created an institutional structure that is far more corrupt than the one it replaced. Under the anti-defection law, a legislator who votes against the party whip faces disqualification. This means that the party leadership has the constitutional authority to threaten every legislator with the loss of their seat if they do not vote as the leadership directs. In a context where legislative seats are enormously valuable assets in both political and financial terms, this authority is an extraordinary tool of coercive control.

The result has been the development of what one might call a constitutional market for political loyalty. Parties offer legislators not just ideological alignment and electoral support but material rewards: ministerial positions, government contracts, procurement opportunities, and a share of the political rents that come with governmental power. In exchange, legislators agree to vote as they are told. The anti-defection law has not eliminated defection, as the recent history of political events in several states including Madhya Pradesh (2020), Maharashtra (2022), and Manipur demonstrates. What it has done is raise the price of defection while simultaneously raising the returns to loyalty. The result is a political economy in which the effective currency of legislative politics is money and patronage rather than policy and ideology.

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Zoya Hasan, in her political sociology of Indian democracy, has documented the progressive criminalization of Indian politics in precisely these terms: the entry of organized crime into electoral politics is not an anomaly or an aberration but a rational response to the institutional incentives created by a constitutional structure that makes legislative power extraordinarily valuable and that provides limited mechanisms for the accountability of legislators to voters.

The data is damning. According to the Association for Democratic Reforms analysis of the 2024 Lok Sabha elections, 46 percent of the Members of Parliament elected in 2024 had declared criminal cases against them. 31 percent faced serious criminal charges including charges of murder, rape, and kidnapping. This is not a statistical accident. It is a constitutional consequence.

1.4 Electoral Finance and Constitutional Capture

The constitutional silence on political party finance, identified in earlier Parts of this textbook, has created a system of constitutionally unregulated political funding that is the foundation of what should be called constitutional capture: the systematic use of money to capture constitutional institutions, including the legislature, the executive, and, through the appointment of politically connected individuals, the judiciary and the regulatory state.

The Electoral Bonds scheme, introduced in 2018 and struck down by the Supreme Court in Association for Democratic Reforms v. Union of India in February 2024, was perhaps the most brazen instrument of constitutional capture in Indian history. The scheme allowed companies and individuals to purchase electoral bonds from State Bank of India branches and donate them to political parties anonymously, with no disclosure requirement. The ruling party, the BJP, received approximately 55 percent of all electoral bonds sold, amounting to several thousand crore rupees.

The Supreme Court's analysis of the scheme, delivered by Chief Justice D.Y. Chandrachud, found that the scheme violated the constitutional right to information because it prevented voters from knowing who was funding political parties. But the Court's analysis understated the constitutional dimension of the problem. The electoral bonds were not merely a transparency problem: they were a mechanism for systematic quid pro quo corruption at the highest levels of constitutional government.

The data released after the Supreme Court's order revealed that several major corporate donors to the BJP had received regulatory approvals, government contracts, or favorable policy decisions after their donations. The correlation is not proof of causation in any individual case, but as a pattern it is deeply consistent with what constitutional corruption theory would predict: money buys access, access produces outcomes, and the constitutional framework's silence on party finance allows the entire cycle to proceed with institutional cover.

The post-2024 period has seen no serious constitutional reform of political finance despite the Supreme Court's landmark judgment. The Constitution remains silent on party finance. The Representation of the People Act's disclosure requirements remain inadequate. The constitutional machine for converting money into power continues to operate, now without the specific

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instrument of electoral bonds but with all the other instruments that the constitutional framework's silence enables.

1.5 Land Acquisition, Real Estate Corruption, and the Constitutional Property Regime

Land is the primary source of political finance in India. The nexus between land acquisition, real estate development, political funding, and administrative corruption is one of the most extensively documented aspects of Indian political economy, and it is deeply rooted in the constitutional framework.

The constitutional provisions on land, including the Right to Property under Article 300A (a constitutional right but not a fundamental right), the Land Acquisition provisions in the Union List (Entry 42), and the provisions of various state land reform laws, have created a constitutional regime in which the state has extraordinary power to acquire, regulate, and redistribute land, but in which the exercise of that power is subject to minimal constitutional standards of transparency, accountability, and consistency.

The real estate sector is, by virtually every account, one of the most corrupt sectors of the Indian economy, and this is not a cultural fact but a structural one. The combination of constitutional regulatory power over land use with the constitutional silence on the transparency requirements for the exercise of that power has created a system in which every significant real estate development requires multiple regulatory approvals at both state and local government levels, each of which provides an opportunity for rent extraction. The developer who needs a change of land use classification, a building permit, an environmental clearance, a fire safety certificate, and a range of other approvals faces a gauntlet of discretionary decisions, each of which can be delayed or denied, creating powerful incentives for payment.

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, which was enacted after decades of struggle by displacement-affected communities and civil society organizations, introduced important procedural requirements for land acquisition: social impact assessments, consent requirements in certain cases, and improved compensation formulas. But the Modi government's 2015 attempt to amend the Act to weaken its consent and social impact assessment provisions, which was blocked by the Rajya Sabha, and the subsequent use of state government powers to issue land acquisition notifications under older, pre-2013 frameworks, demonstrates that the political economy of land corruption continues to find ways around legal reform when the constitutional structure continues to vest enormous discretionary power in the state.

1.6 The Judiciary and Corruption: The Uncomfortable Constitutional Truth

The judiciary in India is constitutionally positioned as the guardian of the rule of law and the protector of fundamental rights. But the judiciary is also a human institution operating within the constitutional and social context that this textbook has been analyzing, and it is not immune from corruption.

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Judicial corruption in India operates at multiple levels. At the lower levels of the judicial hierarchy, the corruption is often direct and well-documented: in the subordinate civil and criminal courts, the payment of unofficial fees to court clerks, advocates, and occasionally judges to secure the processing of cases, favorable listings, and, in some documented instances, favorable outcomes is so prevalent that it has been described by survey research as an accepted cost of legal proceedings. Transparency International's India Corruption Study of 2018 found that the judiciary was among the institutions that Indian citizens most frequently reported paying bribes to access services.

At the higher judicial levels, corruption operates differently: through the informal nexus between senior lawyers, judges, and political and business interests that shapes judicial careers, the allocation of cases, and the development of legal doctrine in ways that serve the interests of the wealthy and the connected rather than the poor and the marginalized. The collegium system, which allows senior Supreme Court judges to appoint their own successors, has created a closed network of mutual reinforcement that is not transparent to the public and that is, structurally, highly susceptible to the development of informal reciprocities.

The constitutional silence on judicial accountability is as damaging as the constitutional silence on party finance. There is no constitutional mechanism for the regular public accounting of judicial conduct. The impeachment process for Supreme Court judges, which requires an address by both Houses of Parliament, has been used only once in the history of independent India (and that impeachment motion against Justice Ramaswami in 1993 failed to secure the required majority). The absence of a functional accountability mechanism means that the judiciary can engage in conduct ranging from favoritism in case listings to outright corruption without facing any constitutional consequence.

CHAPTER TWO: THE PEOPLE AS SUBJECTS

CONSTITUTIONAL VICTIMHOOD AND THE MANUFACTURING OF CONSENT

2.1 The Grammar of Constitutional Victimhood

The constitutional order of any state can be evaluated from two perspectives: the perspective of the state (what institutional arrangements does it create, how are powers distributed, what are the formal rules) and the perspective of the citizen (how does this order affect the lived experience of actual people, does it make their lives better or worse, does it treat them as agents or as objects). The Indian Constitution, considered from the first perspective, is a document of considerable sophistication. Considered from the second perspective, particularly from the perspective of the majority of Indian citizens who are poor, marginalized, and without the social, economic, and political capital to navigate the constitutional order on their own terms, it is an instrument of disappointment, often of suffering, and in many documented cases, of active victimhood.

The concept of constitutional victimhood as developed by scholars in the critical legal studies tradition refers to the condition of those who are formally protected by constitutional rights but

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who are, in practice, systematically subjected to rights violations that the constitutional order cannot or will not remedy. Constitutional victimhood is the experience of having rights on paper while living the reality of rightlessness. It is the experience of the tribesperson who has a constitutional right against displacement but who watches their village bulldozed for a mine. It is the experience of the Muslim citizen who has a constitutional right to equality but who is refused housing, subjected to mob violence, and treated as a second-class citizen by the state that is supposed to protect them. It is the experience of the domestic worker who has a constitutional right against bonded labor but who works for years without pay in fear of violence. It is the experience of the prisoner who has a constitutional right to a speedy trial but who spends years in undertrial detention, often longer than the sentence they would have received on conviction.

2.2 The Undertrial Crisis and the Constitution's Broken Promise of Justice

The most dramatic manifestation of constitutional victimhood in India is the undertrial prisoner crisis. According to National Crime Records Bureau data for 2022, the most recently published year as of the writing of this textbook, approximately 75 percent of India's prison population consists of undertrial prisoners: people who have been accused of crimes but who have not been convicted. They are held in custody not because a court has found them guilty but because they cannot afford bail, cannot afford a lawyer to argue for their release, or are held under laws like the UAPA that reverse the presumption of bail.

The constitutional implications of this crisis are profound. The right to personal liberty under Article 21 is among the most fundamental constitutional guarantees. Article 22 provides specific procedural protections against arbitrary arrest and detention. The Supreme Court has held repeatedly that the right to a speedy trial is a fundamental right implicit in Article 21. The Constitution of India, in other words, comprehensively guarantees that no person should be deprived of liberty without a fair and speedy legal process.

And yet more than 400,000 people sit in Indian prisons as undertrial prisoners, many of them for years. The average time to disposal for criminal cases in district courts ranges from three to seven years. For complex cases under special laws like the UAPA or NDPS (Narcotic Drugs and Psychotropic Substances Act), the period of undertrial detention can extend to a decade or more. The Bhima Koregaon case defendants, arrested in 2018, have in several instances been in pre-trial detention for seven or more years at the time of writing.

This is not a failure of the constitutional system to work as designed. It is the constitutional system working precisely as it was designed: with a formal guarantee of rights that generates no political costs when systematically violated, with an enforcement mechanism (the courts) that is too slow, too expensive, and too inaccessible to be effective for the majority of the people it is supposed to serve, and with a detention machinery (the police and prosecution system) that is incentivized to make arrests and that faces no effective constitutional accountability when those arrests are arbitrary, malicious, or incompetent.

The three new criminal codes enacted in 2023, the Bharatiya Nyaya Sanhita replacing the Indian Penal Code, the Bharatiya Nagarik Suraksha Sanhita replacing the Code of Criminal Procedure, and the Bharatiya Sakshya Adhiniyam replacing the Indian Evidence Act, were presented by the

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government as a decolonization of criminal law: a replacement of British-era legislation with Indian-named alternatives. The substance of the changes, however, is deeply contested. Critics, including the Bar Council of India, senior advocates, and constitutional law scholars, have argued that the new codes retain the essential structure of colonial criminal law, that they actually expand several of the most problematic provisions of the old law (including police remand powers and the definition of sedition-like offenses), and that the rushed enactment without adequate parliamentary deliberation or consultation with stakeholders represents a fundamental failure of the legislative process.

The particular irony of presenting the perpetuation of colonial criminal law under Indian names as "decolonization" is not lost on those who examine the substance of the new codes. The real decolonization of criminal law would require the abolition of preventive detention, the radical reform of the bail system, the constitutional guarantee of a genuinely speedy trial, and the structural reform of the police and prosecution system to ensure accountability. None of these things has been done.

2.3 Forced Displacement and the Constitutional License to Dispossess

The World Bank has estimated that between 1947 and 2004, development-induced displacement in India affected between 40 and 50 million people. More recent estimates, taking into account the acceleration of infrastructure development, mining, and industrial projects under successive governments, suggest that the cumulative figure since independence may be close to 80 million people. This represents one of the largest programs of forced displacement of a civilian population in the world outside of active war.

The constitutional foundations of this displacement are multiple. The state's power of eminent domain, exercised through land acquisition legislation, has been used to acquire land for dams, highways, railways, industrial estates, mining projects, power plants, and special economic zones. The Forest Rights Act of 2006, which was supposed to recognize the historic rights of forest-dwelling communities over the land they had occupied and used for generations, has been systematically undermined by forest bureaucracies using the constitutional authority to declare forests "reserved" under the Indian Forest Act of 1927, another colonial-era statute.

The people most affected by displacement are the most constitutionally vulnerable: scheduled tribe communities whose constitutional protections under the Fifth and Sixth Schedules have proven inadequate against the combined pressure of development capital and state power, scheduled caste communities whose urban settlements are treated as "encroachments" on state land, and rural poor communities whose informal land rights are constitutionally invisible because the Constitution's model of property recognizes only formal, documented ownership.

The practice of bulldozer demolitions, which has become a defining feature of governance in several BJP-governed states since 2017, represents a particularly brutal manifestation of this constitutional dispossession. Under the guise of anti-encroachment action and punitive demolition of the property of those accused (note: accused, not convicted) of crimes, state governments have demolished the homes and properties of thousands of citizens, disproportionately targeting Muslim communities. The Supreme Court, in a landmark but

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inadequately implemented ruling of November 2024, held that punitive demolition of private property without due process violated the constitutional right to life and shelter under Article 21 and the constitutional guarantee of equality before the law under Article 14. The Court held that the state cannot use its regulatory powers over unauthorized construction as a pretext for collective punishment of communities or individuals accused of crimes.

But the Supreme Court's ruling, welcome as it is, illustrates the fundamental problem of the constitutional order: rights are declared after violations have occurred, enforcement of those declarations is incomplete, and the political consequences of constitutional violations are negligible. The state governments that conducted bulldozer demolitions in defiance of constitutional norms have faced no serious legal or political accountability. The court order has been partially implemented in some cases and largely ignored in others.

2.4 Aadhaar, the Welfare State, and the Constitutional Paradox of Digital Exclusion

The Aadhaar biometric identification system, which was constitutionally contested and partially upheld by the Supreme Court in Justice K.S. Puttaswamy (Retd.) v. Union of India (Aadhaar case, 2018), represents a constitutional paradox of extraordinary proportions: a system ostensibly designed to deliver welfare benefits to the poor that has, in documented cases, systematically denied those benefits and contributed to deaths from hunger and institutional neglect.

The Supreme Court in the Aadhaar case upheld the core of the system while striking down several of its expansions, holding that Aadhaar is constitutionally valid for the delivery of government benefits funded from the Consolidated Fund of India but cannot be made mandatory for private contracts or for services not funded by the state. The majority judgment, written by Justice A.K. Sikri, accepted the government's argument that Aadhaar would reduce leakage of government welfare benefits to "ghost" beneficiaries and thus better serve the constitutional goal of ensuring that benefits reach their intended recipients.

The constitutional reasoning is coherent in the abstract. But the ground reality has been constitutionally devastating. The mandatory requirement of Aadhaar biometric authentication for the receipt of food ration under the Public Distribution System, for the receipt of pensions, and for other welfare benefits has created a situation in which people whose biometric data does not authenticate correctly (due to worn fingerprints from manual labor, damaged sensors, connectivity failures in remote areas, or bureaucratic errors) are denied their constitutional entitlements. Multiple documented cases from states including Rajasthan, Jharkhand, and Chhattisgarh have linked deaths by starvation to the denial of food rations due to Aadhaar authentication failures.

The constitutional analysis of these deaths requires engagement with the question of state action and constitutional responsibility. The Supreme Court has held that the right to life under Article 21 includes the right against hunger and the right to food. If state action (the mandatory Aadhaar requirement) causes a person to be denied food to which they are entitled under law, and that person dies of hunger as a result, has the state violated Article 21? The answer, from a principled constitutional standpoint, is clearly yes. The answer from the standpoint of actual constitutional

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accountability is that no official has been held constitutionally responsible for any of these deaths.

The paradox is complete: a constitutional framework that guarantees the right to life, that creates a welfare state apparatus to give content to that right, that then layers on a technological system that creates new modes of exclusion from that welfare apparatus, and that provides no meaningful constitutional remedy when that exclusion results in death, is a framework that has failed at the most fundamental constitutional task.

2.5 The Constitutional Position of Women: Formal Equality and Structural Subordination

The Constitution of India prohibits discrimination on the basis of sex under Articles 14 and 15, and Article 15(3) permits the state to make special provisions for women and children. Article 39 directs the state to ensure equal pay for equal work. Article 21, as expanded by judicial interpretation, has been held to include the right against sexual harassment at the workplace (Vishaka guidelines, 1997) and a range of other protections for women's dignity and bodily integrity.

And yet the constitutional status of women in India in 2025 remains one of profound structural inequality. The constitutional prohibition of discrimination is formally real but practically limited by the deep embedding of patriarchal social structures that the constitutional order has been unwilling or unable to challenge at their roots.

The persistence of personal law systems, under which marriage, divorce, inheritance, and custody for Hindus, Muslims, Christians, and Parsis are governed by religion-specific laws rather than a uniform civil code, means that the constitutional equality guarantee is systematically compromised in the most intimate spheres of life. The constitutional directive under Article 44 to enact a Uniform Civil Code, which has been a Directive Principle since 1950, remains unimplemented. Multiple Law Commission reports have recommended the enactment of a UCC; the most recent Law Commission report of 2018 declined to recommend a uniform code on the ground that India's diversity requires a more nuanced approach. The question is politically explosive, deeply contested, and constitutionally unresolved.

The Women's Reservation Act of 2023 (Constitution 106th Amendment), which reserves one-third of Lok Sabha and state assembly seats for women, was presented as a major constitutional advance for women's political participation. The Supreme Court upheld this Act in 2024. But the Act contains a critical delay mechanism: it will not come into force until after the next census (which has been postponed indefinitely beyond its original 2021 schedule) and the subsequent delimitation exercise, which may not occur before 2026 at the earliest, with actual implementation of reservations possibly not occurring until 2029. Multiple political analysts and women's rights scholars have characterized the reservation as a constitutional gesture timed for electoral gain without commitment to actual implementation in the near term.

2.6 The Constitutional Status of the Poor: Between Aspiration and Abandonment

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The Directive Principles establish, in theory, a comprehensive welfare state: the right to work, to education, to healthcare, to an adequate standard of living, to equal pay, to protection from exploitation, to a healthy environment. The Supreme Court has used Article 21 to constitutionalize several of these directives, holding that the right to life includes the right to livelihood, the right to food, the right to education, and the right to health.

But the constitutional economy of the poor in India is characterized not by the realization of these rights but by their systematic frustration at every level of the state apparatus. The National Rural Employment Guarantee Act (NREGA), which is the largest employment guarantee program in the world, guarantees 100 days of employment per year to rural households who demand it. It is constitutionally grounded in the directive principles and has been held by the Supreme Court to be an instrument for giving effect to the right to livelihood under Article 21. But NREGA implementation is characterized by delayed wage payments (despite a Supreme Court order requiring timely payment), exclusion of eligible households through administrative manipulation of demand registration, social audits that are structurally limited in their effectiveness, and political manipulation of work allocation.

The National Food Security Act, 2013 is perhaps the world's largest food entitlement program, covering approximately 800 million people. Its constitutional foundation lies in the right to food that the Supreme Court has derived from Article 21. But the implementation of the Act is marked by exclusion errors (poor households that meet the eligibility criteria are excluded), inclusion errors (wealthy households receive benefits through political influence), quality problems (subsidized food grain of inadequate quality), and administrative corruption at every level of the delivery chain.

The fundamental constitutional problem is this: the Constitution creates aspirational welfare rights without creating the institutional infrastructure, the accountability mechanisms, or the fiscal foundations to realize those rights for the majority of the population. The poor are offered constitutional promises that they have little power to enforce. The state is offered constitutional obligations that it faces little cost for failing to meet. The result is a constitutional welfare state that is, for tens of millions of people, largely fictional.

CHAPTER THREE: THE NATIONALIST TURN AND THE DISTORTION OF CONSTITUTIONAL IDENTITY

3.1 The Constitutional Architecture of Nationality and Its Perversion

The Constitution of India defines Indian citizenship in Part II (Articles 5-11) and grants Parliament the power to regulate citizenship under Entry 17 of the Union List. The constitutional model of Indian citizenship is, in theory, a civic rather than an ethnic model: citizenship is a legal relationship between the individual and the state, defined by birth, descent, registration, or naturalization, without reference to religion, caste, language, or ethnicity. This civic model of citizenship reflects the inclusive constitutional nationalism that Nehru, Ambedkar, and the secular nationalist tradition sought to establish as the foundation of the Indian republic.

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The constitutional ideal of civic nationalism has been under sustained assault for decades, but the assault has intensified dramatically since 2014. The assault operates through multiple channels: legislative changes to the citizenship framework, administrative practices that target religious minorities in citizenship determination, the deployment of nationalist cultural symbols in state-sponsored activities, the use of educational curricula to promote a Hindu-civilizational narrative of Indian identity, and the systematic marginalization of minority communities in the exercise of constitutional rights.

The Citizenship Amendment Act of 2019 is the legislative centerpiece of this assault. The Act amends the Citizenship Act of 1955 to provide a fast-track path to Indian citizenship for persons belonging to Hindu, Sikh, Buddhist, Jain, Parsi, or Christian communities who came from Afghanistan, Bangladesh, or Pakistan before December 31, 2014. The explicitly religious criteria for the eligibility for this fast-track path, which excludes Muslims entirely, represents a fundamental departure from the constitutional model of civic citizenship.

The government's justification for the exclusion of Muslims from the CAA's ambit, that Muslims are not minorities in the three named countries (which are Muslim-majority), has been extensively analyzed by constitutional scholars and found constitutionally inadequate. The argument proves too much: if the criterion is minority status in the country of origin, then Muslim minorities from countries like Myanmar, Tibet, or Sri Lanka who have faced severe persecution are also excluded. The exclusion is not about minority status in origin countries but about religious identity, and a religious criterion for citizenship eligibility violates the constitutional prohibition of discrimination on grounds of religion under Articles 14 and 15.

The constitutional challenge to the CAA has been pending before the Supreme Court since 2019. As of the writing of this Part in early 2026, the Court has not decided the case on the merits. This extraordinary delay in the adjudication of a fundamental constitutional question, involving 220+ writ petitions filed by state governments, political parties, civil society organizations, and individuals, is itself a constitutional failure: the Constitution's promise of a speedy remedy for rights violations through Article 32 is meaningless if the Supreme Court takes seven or more years to hear a challenge.

3.2 The National Register of Citizens, Statelessness, and Constitutional Cruelty

The National Register of Citizens exercise in Assam, completed in 2019, resulted in approximately 1.9 million people being excluded from the list of recognized Indian citizens, despite the fact that many of these people had lived in Assam for decades, had voted in elections, had received government welfare benefits, and had children who were born in India. The NRC exercise required citizens to produce documentary evidence of their citizenship or that of their ancestors: birth certificates, school leaving certificates, land records, ration cards, voter cards, all documents that poor, illiterate, and rural citizens often do not possess, not because they are not citizens but because the state itself has never reliably issued or maintained such documentation for the poor.

The constitutional dimensions of the NRC crisis are multiple and devastating. The burden of proof was effectively reversed: instead of the state having to demonstrate that a person is not a

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citizen, the person was required to demonstrate that they are. This reversal is incompatible with the constitutional presumption of liberty and with the principle, derived from Article 21, that the state cannot deprive a person of their legal status without adequate process. The documentary requirements privileged those with access to the formal documentation economy, which means the educated, the urban, and the propertied, against those without, which means the rural poor, the illiterate, women who have taken their husband's name and lost their birth name connection to documents, and those who have been migrants within the country.

The consequence of exclusion from the NRC is, constitutionally, catastrophic. A person not included in the NRC faces potential detention in one of the Foreigners Detention Centers (now renamed Holding Centers) that are being constructed in Assam, a prolonged and expensive legal process before Foreigners Tribunals, and the eventual possibility of statelessness. The constitutional right against arbitrary detention under Articles 21 and 22 provides, in theory, protection against indefinite detention without determination of status. The Supreme Court has held that stateless persons cannot be detained indefinitely. But the gap between these constitutional holdings and the reality faced by the 1.9 million excluded from the NRC is immense and continues to be filled with suffering.

The proposed extension of the NRC to the entire country, which the Home Ministry has indicated as a potential government policy, would represent the largest mass disenfranchisement operation in democratic history if applied with criteria similar to those used in Assam. The constitutional implications would be transformative and almost certainly catastrophic for the constitutional rights of tens of millions of poor, marginalized, and minority citizens.

3.3 The Weaponization of Constitutional Law Against Constitutional Values

The perversion of the constitutional order for nationalist ends is not confined to specific legislation. It operates through the systematic weaponization of constitutional and legal provisions that were designed for one purpose but are being used for a fundamentally different one.

The offense of sedition, which was Section 124A of the Indian Penal Code (now reproduced in a modified form as Section 152 of the Bharatiya Nyaya Sanhita), was enacted by the British colonial government in 1870 specifically to suppress the political activities of the independence movement. It makes it a criminal offense, punishable by imprisonment for life, to bring or attempt to bring into hatred or contempt the government established by law. The Supreme Court in Kedar Nath Singh v. State of Bihar (1962) held that sedition was constitutionally valid but limited its scope to speech that incites violence or public disorder. The Court subsequently put Section 124A on hold in May 2022 pending a constitutional review, finding that the provision had been extensively misused.

But the Bharatiya Nyaya Sanhita, enacted in 2023, while omitting the specific word "sedition," replaces it with Section 152, which criminalizes acts "exciting or attempting to excite secession, armed rebellion or subversive activities" or that "endanger the sovereignty or unity and integrity of India." Legal scholars have argued that this provision is at least as broad as the sedition law it

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notionally replaces, and that its migration from the old colonial framework to the new nationalist one represents not decolonization but rebranding of colonial repression.

The UAPA (Unlawful Activities Prevention Act) represents the constitutionalization of permanent emergency: a law that functions, in practice, as a permanent suspension of the bail rights, presumption of innocence, and speedy trial guarantees that the Constitution ostensibly provides. The provision of Section 43D(5) of the UAPA, which directs courts not to grant bail if the prosecution's case appears prima facie to be true (a very low threshold), has produced a situation in which UAPA accused are routinely held for years or decades without trial. The Supreme Court has held, in NIA v. Zahoor Ahmad Shah Watali (2019), that the standard for the denial of bail under the UAPA is so low as to make bail virtually impossible, effectively converting detention during trial into the punishment itself.

The use of the UAPA against students, professors, journalists, lawyers, and human rights defenders in the period 2018-2025 has been extensively documented. The pattern of its use reveals a systematic deployment against those who challenge the government's political agenda, particularly its communal and nationalist dimensions, rather than against those who pose genuine threats to national security in the sense the Act nominally addresses. This is constitutional law being used against constitutional values: a statute whose constitutional foundation lies in the state's power to protect national security being used to suppress the very speech, assembly, and association that the Constitution's Part III is designed to protect.

3.4 The RSS, Hindutva, and the Extra-Constitutional Center of Power

Any jurisprudential analysis of the Indian constitutional order that does not engage with the role of the Rashtriya Swayamsevak Sangh (RSS) in the structure of power is analytically incomplete. The RSS is constitutionally invisible: it is not a political party, does not contest elections, and has no formal role in any constitutional institution. And yet it is the organizational foundation of the BJP, the training ground for the BJP's political leadership, and the source of ideological direction for a network of affiliated organizations that penetrate virtually every aspect of civil society, education, media, and institutional life.

The constitutional significance of this extra-constitutional center of power is profound. The Constitution of India creates a framework of accountable governmental power: power that is formally authorized, publicly exercised, legally constrained, and electorally accountable. The RSS represents a form of constitutional governance that operates outside these constraints: an organization with enormous political influence, no formal constitutional accountability, no transparency in its internal decision-making, no democratic authorization for its ideological agenda, and no legal mechanism through which citizens can challenge its influence on government policy.

The jurisprudential problem this creates is not merely political. It is structural: the Constitution's model of democratic accountability is premised on the idea that governmental power is exercised by formal governmental institutions that are publicly visible and legally constrained. When a significant portion of the effective power to set the direction of national policy is exercised by an extra-constitutional organization whose proceedings are secret and whose decisions are not

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legally accountable, the constitutional model of accountable governance is undermined in ways that formal legal analysis cannot easily capture.

Professor Upendra Baxi, in his work on constitutional transformation and democratic legitimacy, has argued that Indian constitutionalism has always operated in the shadow of what he calls "proto-constitutional" powers: social forces, economic interests, and cultural authorities that exercise effective power without formal constitutional status. The RSS is the most powerful of these proto-constitutional forces in the current era, and its growing influence on constitutional governance represents a fundamental challenge to the constitutional model of accountable democratic power.

CHAPTER FOUR: ONE NATION ONE ELECTION AND THE ENGINEERING OF ELECTORAL AUTOCRACY

4.1 The 129th Amendment and Its Constitutional Pretensions

The Constitution (129th Amendment) Bill, 2024, which proposes to synchronize the elections to the Lok Sabha and all State Legislative Assemblies (the so-called "One Nation One Election" or ONOE scheme), is one of the most constitutionally significant and constitutionally problematic legislative proposals of the post-independence era. Introduced in the Lok Sabha in December 2024 and referred to a Joint Parliamentary Committee, the Bill deserves jurisprudential analysis of exceptional depth, because beneath its apparently administrative surface lie several constitutional questions of fundamental importance.

The surface justification for ONOE is fiscal and administrative: frequent elections are costly (the 2024 Lok Sabha elections reportedly cost approximately Rs. 1.35 trillion, making them the most expensive elections in world history), disruptive to governance (the imposition of the Model Code of Conduct during elections prevents policy announcements and administrative decisions), and distracting (politicians spend too much time campaigning rather than governing). These arguments have been accepted by several high-level committees, including the Law Commission, the Sarkaria Commission, and most recently the former President Ram Nath Kovind's committee whose report in 2024 provided the constitutional basis for the 129th Amendment Bill.

But each of these justifications deserves interrogation, and the constitutional consequences of ONOE extend far beyond the administrative inconveniences that justify it.

4.2 The Federal Destruction at the Heart of ONOE

The most fundamental constitutional problem with ONOE is its treatment of state legislative assemblies. Under the current constitutional framework, each state assembly has a five-year term from the date of its first meeting after a general election. The assembly can be dissolved earlier if the government loses its majority, if the state government requests dissolution, or if the Governor dissolves it under Article 174. But the term of a state assembly is constitutionally linked to the

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democratic mandate of the state's electorate, not to the convenience of the central government's electoral calendar.

ONOE proposes to override this framework by synchronizing all state elections with Lok Sabha elections, which means that state assemblies elected at times other than a general Lok Sabha election will have their terms truncated (if they were elected after the last Lok Sabha election) or extended (if their term would expire before the next Lok Sabha election) to align with the Lok Sabha calendar. The truncation or extension of a state assembly's term by central legislative action, without the consent of the state's people, is a fundamental violation of the democratic principle that the electoral mandate belongs to the voters who gave it.

The federalism dimension is equally serious. The Constitution's federal structure, which is part of the basic structure as established in Kesavananda Bharati and elaborated in S.R. Bommai v. Union of India (1994), requires that state governments within their sphere have genuine independence from the Centre, including independence in the conduct of their democratic processes. ONOE effectively subordinates the electoral calendar of state democracies to the convenience of the Union's electoral calendar. This is a form of federal subordination that is constitutionally inconsistent with the basic structure's guarantee of federalism.

The argument that ONOE was itself practiced between 1951 and 1967 (when elections were in fact held simultaneously because most state assemblies were formed around the same time as the Lok Sabha) misunderstands the constitutional point. The historical synchrony of the first two decades was a coincidence of timing, not a constitutional design choice, and it was disrupted by the normal operation of parliamentary democracy as some governments fell before their term expired. The constitutional entrenchment of ONOE through the 129th Amendment is not a restoration of historical practice but a coercive constitutional redesign.

4.3 ONOE and the Presidential Model: The Hidden Agenda

Several constitutional scholars have identified in the ONOE proposal a masked transition from a parliamentary to a presidential model of government. The logic runs as follows: if all elections are held simultaneously, the formation of the central government and the formation of state governments will be closely correlated, because voters will tend to align their state and national choices under the influence of a synchronized national campaign dominated by national party leaders. The advantage will flow heavily to the party with the strongest national brand, organizational resources, and media presence, which in the current period is the BJP.

Furthermore, ONOE makes it practically very difficult to hold state elections between the fixed synchronization points. If a state government falls before its term expires, the 129th Amendment Bill provides for the constitution of the remaining term of the Lok Sabha rather than fresh elections: the state would be governed either through President's Rule or through an alternative government formed without fresh elections for potentially years. This provision significantly reduces the democratic accountability of state governments, because the electorate's ultimate sanction (the threat of electoral defeat) would be delayed by the synchronization mechanism.

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Pratap Bhanu Mehta, one of India's foremost political theorists, has argued that ONOE is constitutionally dangerous precisely because it appears moderate while achieving immoderate constitutional change: it does not formally abolish parliamentary democracy or federalism, but it restructures the electoral mechanism in ways that significantly advantage the dominant national party, reduce the effective democratic accountability of state governments, and progressively centralize the effective locus of political power.

The 129th Amendment Bill is, as of early 2026, under review by a Joint Parliamentary Committee. Its constitutional validity would certainly be challenged if it were enacted. Whether the Supreme Court would strike it down, given its record of deference to the executive on matters of constitutional sensitivity in the post-2014 period, is genuinely uncertain.

4.4 The Constitutional Theory of Electoral Democracy and Its Current Crisis

The broader constitutional context within which ONOE must be understood is the theory of electoral democracy itself: what does the constitutional guarantee of periodic elections, free and fair contests, and universal suffrage actually require, and what threatens it?

The V-Dem Democracy Report 2025, cited in the Preface to this Part, confirms that India has been classified as an electoral autocracy since 2017. The classification does not mean that India's elections are fraudulent in the sense of ballot stuffing or vote counting manipulation (though allegations of electoral roll manipulation, as documented in the Bihar voter revision controversy of 2025, are serious and must be taken seriously). It means that the conditions for genuinely free and fair elections, including freedom of expression, freedom of the press, independence of electoral administration, absence of disproportionate use of state resources by the ruling party, and freedom from intimidation of opposition candidates and voters, have been seriously compromised.

The constitutional framework for elections in India is contained in Part XV (Articles 324-329), which establishes the Election Commission of India and gives it the power to "superintend, direct and control the preparation of electoral rolls and the conduct of all elections." The independence of the Election Commission is supposed to be guaranteed by the security of tenure of its members under Article 324(5), which provides that the Chief Election Commissioner shall not be removed except through the same process as a Supreme Court judge.

But the 2023 amendment to the Election Commission Act, which changed the process for appointing Election Commissioners from one involving the Chief Justice of India to one involving a committee of the Prime Minister, a Union Cabinet Minister, and the Leader of the Opposition in the Lok Sabha, has been widely criticized as a weakening of the independence of the body responsible for conducting elections. The Supreme Court in Anoop Baranwal v. Union of India (2023) had directed that a three-member committee including the CJI should make these appointments, and the parliamentary legislation of 2023 was widely understood as a response to that direction designed to exclude the Chief Justice. This legislative reversal of a judicial direction about the independence of the electoral machinery is a significant constitutional event that deserves to be recognized as such.

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CHAPTER FIVE: THE WAQF AMENDMENT, RELIGIOUS DISCRIMINATION, AND THE COLLAPSE OF CONSTITUTIONAL SECULARISM

5.1 The Waqf (Amendment) Act 2025 and Its Constitutional Context

The Waqf (Amendment) Act, 2025, enacted after intense parliamentary debate and amid substantial protests from Muslim communities and secular political parties, represents one of the most significant statutory interventions in the governance of Muslim religious endowments in the post-independence period. The Act amends the Waqf Act, 1995, which governs the administration of waqf properties: properties dedicated under Islamic law for religious, educational, or charitable purposes.

The 2025 Amendment makes several significant changes: it includes non-Muslim members in Waqf Boards (state bodies that administer waqf properties), mandates digital surveys of all waqf properties, creates a mechanism for the government to adjudicate disputes between claims of waqf property and government land claims with the government itself as a party, and restricts the power of Waqf Boards to declare properties as waqf on the basis of traditional usage (the so-called "waqf by user" doctrine).

The constitutional dimensions of these changes require careful analysis. The inclusion of non-Muslim members in Waqf Boards is defended by the government as a transparency and accountability measure but is criticized by Muslim religious scholars and constitutional lawyers as an interference in the management of Muslim religious institutions that violates the constitutional guarantee under Article 26 of the right of every religious denomination to manage its own affairs in matters of religion. The Supreme Court has held, in the Shirur Mutt case (1954) and subsequent decisions, that "matters of religion" within Article 26 include not only doctrinal and ritual matters but also the management of property dedicated for religious purposes and the administration of religious institutions. The inclusion of non-Muslim members in the management of Muslim religious endowments is, on this analysis, a violation of Article 26.

The government creation of dispute resolution mechanisms in which the government is simultaneously a party (as a claimant of land for public purposes) and a participant in the adjudicatory process (through the district collector who plays a role in the new dispute process) violates the fundamental constitutional principle of nemo iudex in causa sua (no one should be a judge in their own case), which is a basic requirement of due process under Article 21 and of the rule of law.

5.2 The Broader Pattern of Anti-Minority Constitutional Governance

The Waqf Amendment cannot be understood in isolation. It is part of a pattern of legislative and administrative action targeting Muslim institutions, properties, and community rights that has intensified significantly in the period 2014-2025. This pattern includes: the triple talaq criminalization legislation of 2019 (which, whatever its social merits in protecting Muslim women from arbitrary divorce, was enacted without consultation with Muslim communities and

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without addressing the same issue in the context of other personal law systems); the demolition of Muslim-owned properties in the wake of communal violence or political protests; the restrictions on cow slaughter that affect Muslim butchers and leather workers disproportionately; the prevention of the construction of new mosques in several BJP-governed states; and the systematic targeting of Muslim-owned properties and businesses in the application of anti-encroachment legislation.

The constitutional significance of this pattern is not merely about individual violations, serious as they are. It is about the transformation of the constitutional model of civic nationalism, in which all citizens regardless of religion are equally protected and equally constrained by the law, into a model of majority nationalism in which the exercise of state power is systematically asymmetric: more protective of the rights of the majority community and more willing to use coercive power against the minority community.

This asymmetric constitutionalism is not a new phenomenon in India: the post-partition history includes many instances of state failure to protect Muslim communities from communal violence, and several documented instances of state complicity in that violence. But the systematic and unapologetic character of the current asymmetry, in which senior government officials openly celebrate the demolition of Muslim-owned structures and in which anti-Muslim sentiment is deployed as an electoral strategy, represents a qualitative change in the relationship between the constitutional framework and the Muslim minority.

The transformation from incidental to structural anti-minority governance, from government failures to protect minorities to government policies that affirmatively disadvantage them, is the constitutional definition of the transformation from a secular to a communal state, whatever the formal constitutional text may say.

5.3 Article 25, Article 26, and the Jurisprudence of Religious Autonomy

The Supreme Court's jurisprudence on religious freedom, developed over seven decades of decisions on the scope of Articles 25 and 26, reveals a complex and not entirely coherent body of doctrine that has been shaped as much by political context as by principled constitutional reasoning.

Article 25 guarantees to every person the freedom of conscience and the right to profess, practice, and propagate religion, subject to public order, morality, health, and other fundamental rights. Article 26 guarantees to every religious denomination or section thereof the right to establish and maintain institutions for religious and charitable purposes, to manage its own affairs in matters of religion, to own and acquire movable and immovable property, and to administer such property in accordance with law.

The critical distinction in the Court's jurisprudence between "matters of religion" (which are exclusively within the denomination's own authority) and "matters that happen to be associated with religion but are really secular in character" (which the state can regulate) was established in the Shirur Mutt case and has been the foundation of all subsequent constitutional adjudication on religious autonomy. The distinction has proven extraordinarily difficult to apply consistently

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because, from a religious believer's perspective, the distinction between the religious and the secular does not always correspond to the outsider's (or the state's) categorization.

The Sabarimala case, in which the Supreme Court in Indian Young Lawyers Association v. State of Kerala (2018) held that the exclusion of women of menstruating age from the Sabarimala temple violated the fundamental right to religion and equality, illustrates the complexity of these questions. A five-judge bench (since expanded to a nine-judge constitutional bench to reconsider specific questions) held that the exclusion was not a matter of essential religious practice and therefore could be overridden by the constitutional equality guarantee. But the dissenting judgment of Justice Indu Malhotra argued powerfully that the Court was substituting its own judgment for the judgment of the religious community about what is essential to their practice, in violation of Article 26's guarantee of self-governance in matters of religion.

The Sabarimala controversy illustrates a deep constitutional tension: the religious autonomy guarantee of Article 26 and the equality and dignity guarantees of Articles 14 and 21 may point in opposite directions when religious practices systematically disadvantage women or other groups. The constitutional resolution of this tension requires a principled framework that Indian jurisprudence has not yet fully developed.

CHAPTER SIX: CONSTITUTIONAL COLONIALISM IN THE MODERN IDIOM

UAPA, THE FOREIGN CONTRIBUTIONS ACT, AND THE WAR ON CIVIL SOCIETY

6.1 The Legal Archaeology of Colonial Repression

To understand how constitutional law has been and continues to be used against the people of India, one must engage in what might be called the legal archaeology of colonial repression: the excavation of the British-era statutory foundations that lie beneath the edifice of modern Indian security law, revealing how thoroughly the apparatus of colonial control has been preserved, renamed, and redeployed in the service of the post-independence state.

The Government of India Act, 1935 included provisions for preventive detention, for the control of sedition, and for the management of political opposition that were explicitly designed to maintain colonial order against the rising tide of Indian nationalism. These provisions were instruments of empire. They were used against Gandhi, against Nehru, against Ambedkar, against Subhas Chandra Bose, against millions of ordinary Indians who participated in the freedom movement. They were, in the most literal sense, tools of oppression.

Independent India, rather than abolishing these tools, has retained, adapted, and in significant respects, strengthened them. The trajectory from the colonial Defense of India Act, to the National Security Act (1980), to the Terrorist and Disruptive Activities Prevention Act (TADA, 1985), to the Prevention of Terrorism Act (POTA, 2002), to the present Unlawful Activities Prevention Act in its amended forms, represents a continuous legal lineage of colonial repression. Each iteration of the security law framework has been justified by a new security

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crisis: communist insurgency, Sikh militancy, LTTE terrorism, Maoist insurgency, jihadi terrorism. But each iteration has also expanded the scope of the law beyond the immediate justifying crisis, creating permanently broadened powers that outlast the specific circumstances that ostensibly justified them.

6.2 The Foreign Contribution (Regulation) Act and the Strangling of Civil Society

The Foreign Contribution (Regulation) Act, 2010 (FCRA), as amended by the FCRA Amendment Act of 2020, is one of the most powerful and most misused instruments in the Indian state's arsenal against civil society. The stated purpose of FCRA is to regulate the receipt of foreign contributions by Indian organizations to ensure that foreign money does not influence Indian political processes or undermine national interest. This is a legitimate constitutional purpose, recognized in comparable legislation in most democracies.

But the FCRA as amended and as applied in practice has been used primarily not to prevent foreign political interference but to defund and disable civil society organizations that are critical of government policy. Between 2014 and 2024, FCRA registrations of thousands of civil society organizations have been cancelled, suspended, or refused renewal. The cancellations have affected organizations working in fields as diverse as health care, education, environment, human rights, women's rights, tribal rights, and religious ministry. Among the organizations whose FCRA registration has been cancelled or suspended are some of India's most respected civil society institutions, including Amnesty International India (which closed its India operations in 2020 following a government investigation), the Ford Foundation-supported programs (which were placed on a watch list), and numerous Christian missionary organizations.

The constitutional problem with this use of FCRA is multiple. The right to association under Article 19(1)(c) includes the right to receive funding for associational activities, including from foreign sources, within the limits of reasonable restrictions. The restrictions that are constitutionally permissible under Article 19(4) are those that are "in the interests of the sovereignty and integrity of India or public order or morality." Using these grounds to cancel the FCRA registration of an organization that runs healthcare programs or documents human rights violations is a constitutionally impermissible extension of the exception that swallows the rule.

The FCRA Amendment of 2020 added a requirement that foreign contributions be received in a designated State Bank of India branch (a single branch in New Delhi), prohibits the sub-granting of foreign funds from one organization to another, and requires the declaration of Aadhaar of all office bearers. These amendments have been challenged before the Supreme Court in Noel Harper v. Union of India, in which the Court in 2022 upheld the amendment by a three-judge bench. The decision has been criticized by constitutional scholars for its extremely deferential approach to executive claims about national security and for its failure to engage with the substantial evidence that the amendments had been used to target organizations based on their political positions rather than genuine national security concerns.

6.3 The Architecture of Surveillance: From NATGRID to Pegasus

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The constitutional right to privacy, established in the Puttaswamy case of 2017, has so far proven to be of limited practical value in checking the growth of the Indian surveillance state. The state's surveillance capabilities have expanded dramatically in the period 2014-2025, and the constitutional framework provides inadequate checks on these capabilities.

The National Intelligence Grid (NATGRID) is a project that links approximately 21 categories of databases maintained by different government agencies to create a comprehensive surveillance system that allows designated agencies to access information about individuals from tax records, bank records, immigration records, railway and airline travel records, telephone records, and other sources in near-real time. NATGRID has no specific statutory authorization: it is an executive creation operating under general executive authority, without parliamentary approval, without judicial oversight, and without any statutory framework for its governance.

The constitutional problem with NATGRID is direct. The Puttaswamy privacy judgment held that the right to privacy is a fundamental right under Article 21 and that infringements of privacy must satisfy the proportionality test: the infringement must be authorized by law, must pursue a legitimate constitutional aim, must be necessary and proportionate to that aim, and must not be arbitrary. A surveillance grid with no statutory authorization, no defined limits on whose information can be accessed or for what purposes, no oversight mechanism, and no redress for individuals whose privacy is violated fails every element of the proportionality test.

The Pegasus controversy, which emerged in 2021 from the Forbidden Stories investigation and was updated in subsequent reporting through 2023-2024, revealed that the mobile phones of at least 300 Indian individuals, including prominent journalists, opposition politicians, constitutional judges (including a sitting judge of the Supreme Court), business executives, election commissioners, and civil society activists, had been infected or targeted with Pegasus spyware sold exclusively to government clients. The Indian government's response to questions about its use of Pegasus was to neither confirm nor deny the use of the spyware, relying on the claim of national security to avoid disclosure.

The Supreme Court constituted a technical committee in 2021 to examine the Pegasus allegations. The committee, in its 2022 report, found that it was unable to definitively confirm the use of Pegasus on the phones it examined (due to limitations in the technical methodology available to it) but concluded that the government had not been fully cooperative with the investigation. The Court's final order in the Pegasus case declined to draw any definitive conclusions but noted the government's non-cooperation and directed the government to ensure the protection of the right to privacy. This outcome was widely characterized as a failure of judicial accountability in a case of fundamental constitutional importance.

6.4 Sedition, Free Speech, and the Constitutional Double Bind

The constitutional guarantee of free speech under Article 19(1)(a) is one of the foundational commitments of the Indian constitutional order. Freedom of speech and expression is not merely a procedural guarantee but a substantive one: it is the foundation of democratic self-governance, of the accountability of power to the governed, and of the individual's capacity for self-expression and intellectual freedom.

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But Article 19(2)'s list of permissible restrictions on free speech is among the most extensive in any comparable democratic constitution. The restrictions on the grounds of the sovereignty and integrity of India, the security of the State, friendly relations with foreign states, public order, decency or morality, contempt of court, defamation, and incitement to an offence together represent a near-comprehensive menu of grounds for restricting speech that, in the hands of a government willing to use them expansively, can effectively nullify the guarantee they ostensibly qualify.

The Supreme Court has, in a series of decisions from Romesh Thappar v. State of Madras (1950) through S. Rangarajan v. P. Jagjivan Ram (1989) to Shreya Singhal v. Union of India (2015), developed a doctrinal framework that is supposed to limit the scope of these restrictions: they must bear a close proximate causal relationship to the harm they claim to prevent, the mere tendency of speech to cause harm is insufficient, and the restrictions must be narrowly tailored and proportionate. The Shreya Singhal case, which struck down Section 66A of the Information Technology Act as unconstitutional, was a landmark in the protection of online free speech.

But the doctrinal framework has proven inadequate in the face of political will to suppress speech that is inconvenient rather than genuinely harmful. The use of sedition charges (and their equivalent under Section 152 of the BNS), the UAPA, criminal defamation, contempt of court, and a range of other provisions against journalists, academics, comedians, students, and activists has created what comparative scholars of free speech law call a "chilling effect": the deterrence of speech that is constitutionally protected but that speakers self-censor to avoid the risk of prosecution. The chilling effect does not require actual conviction; the risk of arrest, the cost of legal defense, and the damage to reputation that comes with criminal accusation are sufficient to silence many speakers.

India's ranking of 161st out of 180 countries in the Reporters Without Borders Press Freedom Index for 2024, and its decline in the Freedom of Expression dimension of the V-Dem index, are empirical measures of this chilling effect. The constitutional system that was supposed to protect free speech has presided over a dramatic reduction in its effective exercise.

CHAPTER SEVEN: THE CONSTITUTIONAL ECONOMY AND THE CLASS QUESTION

7.1 Constitutional Political Economy: A Framework

Constitutional political economy, as developed in the work of James Buchanan, Geoffrey Brennan, and their critics, asks a foundational question about constitutional orders: whose interests does a given constitutional arrangement serve, and what are the distributional consequences of constitutional choices? This framework, applied to the Indian Constitution, reveals a document that has, despite its rhetorical commitment to social and economic equality, consistently served the interests of the propertied, the educated, and the politically connected against the interests of the poor, the illiterate, and the marginalized.

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The analysis in this chapter extends the observations from earlier Parts of this textbook to develop a comprehensive account of the class dimensions of Indian constitutionalism in the contemporary period. It examines the constitutional architecture of economic policy, the relationship between constitutional provisions and the distribution of economic benefits and burdens, and the class character of constitutional enforcement in the twenty-first century.

7.2 The GST Regime and Constitutional Fiscal Federalism

The Goods and Services Tax, which became fully operative in July 2017 following the 101st Constitutional Amendment, is constitutionally constituted under Article 246A as a concurrent power of Parliament and State Legislatures in relation to supply of goods or services. The constitutional amendment that created GST was heralded as the most significant fiscal constitutional reform since independence: a unified, national tax on consumption replacing a fragmented system of central and state indirect taxes.

The constitutional promise of GST was substantial: a unified market, reduced compliance costs, the elimination of the cascading tax-on-tax effect of the previous system, and greater fiscal transparency. Some of these promises have been partially realized. But the constitutional architecture of GST also embeds several features that have systematically disadvantaged the poor.

GST is a consumption tax, and consumption taxes are regressive: they take a higher proportion of the income of the poor than of the rich because the poor spend a larger proportion of their income on consumption than the wealthy, who save and invest a larger proportion. The GST's application to household necessities, including various food items, cooking oil, health products, and clothing, directly raises the cost of living for the poor while reducing the indirect tax burden on the wealthy through the exemption or reduced taxation of investment income and financial instruments.

The composition of the GST Council, the constitutional body that sets GST rates, includes representatives of both the Union and state governments. But the Council's decision-making has been characterized by dominance of the Union government and of states governed by the ruling national party. The GST Council's opaque decision-making on rate classification, on the inclusion of petroleum products (which remain outside GST and generate enormous state revenue), and on the compensation to states for revenue losses has been criticized as insufficiently transparent and insufficiently accountable to the constitutional federal framework.

7.3 Labour Law "Reforms," Constitutional Rights, and the Precarious Worker

The consolidation of India's 44 central labour laws into four labour codes (the Code on Wages, 2019; the Industrial Relations Code, 2020; the Code on Social Security, 2020; and the Occupational Safety, Health and Working Conditions Code, 2020) has been one of the most significant exercises of constitutional legislative power in the period 2019-2025. The stated justification for the consolidation is simplification and ease of compliance, particularly for small and medium enterprises.

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But the constitutional analysis of the labour codes reveals a systematic shift in the balance between the constitutional rights of workers (which include, under Articles 19, 21, 23, and 24, the right to form unions, the right to safe working conditions, the right against forced labour, and the right against child labour, as well as under the Directive Principles the right to a living wage and equal pay) and the interests of employers.

The Industrial Relations Code, in particular, has been criticized for weakening the constitutional protection of the right to strike by broadening the definition of "illegal strike" and by increasing the minimum period of notice required before a strike can lawfully be called. The right to strike has been held by the Supreme Court to be implicit in the right to form associations under Article 19(1)(c), not as an absolute right but as a fundamental ingredient of effective freedom of association. The legislative narrowing of the conditions under which a strike is lawful is, on this analysis, a restriction on a constitutional right that must satisfy the proportionality requirement.

The expansion of the definition of "contract labour" and the broadening of exemptions from core labour protections for smaller enterprises have the effect of excluding a larger proportion of India's predominantly informal and precarious workforce from the protection of the constitutional labour rights framework. In an economy where approximately 90 percent of the workforce is in the informal sector, a constitutional labour framework that effectively applies only to the formal 10 percent is a framework that has constitutionalized the abandonment of the vast majority of working people.

7.4 The Climate Crisis and the Constitutional Right to Environment

The constitutional right to a healthy environment has been developed by the Supreme Court through a series of decisions interpreting Article 21 to include the right to an environment that is not harmful to health and well-being. The National Green Tribunal, established under the National Green Tribunal Act, 2010, is the primary institutional mechanism for the enforcement of environmental rights.

But the constitutional tension between development and environment has been resolved, in the practice of both executive and judicial decision-making, heavily in favor of development. The environmental clearance process, which is supposed to ensure that major development projects do not cause disproportionate harm to the environment and to the communities that depend on it, has been systematically weakened through amendments to the Environmental Impact Assessment notification. The 2020 draft amendment to the EIA notification, which was subjected to widespread criticism and legal challenge for reducing public consultation requirements and expanding exemptions, was partially implemented in modified form and has made it easier for large projects to obtain clearance without genuine environmental scrutiny.

The class dimensions of environmental constitutionalism are stark. The communities that bear the heaviest burden of environmental degradation, through air and water pollution, displacement for dams and mines, loss of forest resources, and climate-change-driven extreme weather, are predominantly the poor, the tribal, the rural, and the socially marginalized. The communities that benefit most from the development projects that generate that environmental harm are predominantly the wealthy, the urban, and the politically connected. The constitutional

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environmental right, as currently enforced, provides inadequate protection for the former and inadequate constraint on the latter.

CHAPTER EIGHT: POWER WITHOUT ACCOUNTABILITY

THE EXECUTIVE SUPREMACY CRISIS OF 2024-2026

8.1 Modi's Third Term and the Constitutional Architecture of Dominance

The 2024 general elections produced a result that was, from the constitutional perspective of democratic accountability, simultaneously alarming and cautiously encouraging. The BJP, which had commanded an outright majority in the 17th Lok Sabha, failed to win a majority on its own in the 18th Lok Sabha, winning 240 seats against the 272 required for a majority. The BJP-led National Democratic Alliance (NDA), with 293 seats total, formed the government under Narendra Modi for a third consecutive term, but now in a condition of genuine coalition dependence that had not characterized the previous two terms.

The constitutional significance of this shift from single-party majority to coalition government is considerable. Coalition government requires negotiation, compromise, and the accommodation of coalition partners' interests in ways that a single-party majority government does not. The Janata Dal (United) and the Telugu Desam Party, the two largest NDA coalition partners on whose support the government depends for its majority, have demonstrated a degree of independent assertion that has constrained the government's legislative agenda on several occasions.

The 129th Amendment Bill on One Nation One Election, for example, could not be brought to a vote by the government because several NDA allies expressed reservations about its federal implications. The 130th Amendment Bill of 2025, which would disqualify ministers from office upon arrest and detention for more than 30 days, similarly reflects tensions within the coalition as alliance partners face their own legal vulnerabilities.

But the structural architecture of executive dominance built up during the 2014-2024 period has not been dismantled by the changed coalition arithmetic. The concentration of decision-making authority in the Prime Minister's Office, the politicization of constitutional institutions including the Election Commission, the CBI, and the Enforcement Directorate, the weakening of judicial independence through the collegium's inability to fill judicial vacancies and through the culture of governmental pressure on judicial appointments, and the systematic reduction of parliamentary deliberation through omnibus legislation and ordinances, these are not contingent features of a single-party majority but structural features of the executive supremacy framework that has been built over the decade of the Modi government.

8.2 The Constitutional Crisis of Judicial Appointments

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The crisis of judicial appointments in India has reached a level of dysfunction in 2024-2026 that constitutes a constitutional emergency of a specific and underappreciated kind. The Supreme Court and High Courts of India have chronic vacancies that directly reduce their capacity to deliver constitutional justice: as of early 2026, approximately 30 percent of sanctioned High Court positions are vacant, and the Supreme Court is functioning at below its sanctioned strength.

The appointments crisis is a direct consequence of the constitutional standoff between the collegium system (established by the Supreme Court's own interpretation of Articles 124 and 217) and the executive's desire to have a role in judicial appointments. The NJAC Act of 2014, which established a six-member National Judicial Appointments Commission including the Law Minister and two eminent persons as well as the Chief Justice and two senior Supreme Court judges, was struck down by the Supreme Court in Supreme Court Advocates-on-Record Association v. Union of India (2015) as violating the basic structure's guarantee of judicial independence.

Since the striking down of the NJAC, the collegium-executive relationship has been characterized by mutual obstruction: the collegium makes recommendations, the executive delays processing them, the collegium reiterates its recommendations, the executive continues to delay or returns names for "reconsideration," and the vacancies accumulate. In several documented cases, the executive has declined to process collegium recommendations for judges it finds politically unacceptable while rapidly processing those it finds more congenial.

The constitutional consequence of this standoff is that the judiciary, the institution charged with the protection of constitutional rights, is systematically understaffed and overwhelmed. The impact falls entirely on litigants, including the poor and the marginalized who depend most on judicial protection, while the institutional actors in the standoff (the executive and the senior judiciary) face no direct cost from the continuation of the crisis.

8.3 The Ordinance Raj and the Bypassing of Parliament

Article 123 of the Constitution empowers the President to promulgate ordinances when Parliament is not in session and when the President is "satisfied that circumstances exist which render it necessary for him to take immediate action." An ordinance has the force of law but lapses six weeks after the reassembly of Parliament unless Parliament passes it into legislation.

The ordinance power was designed as an emergency legislative mechanism for situations requiring immediate legal action that cannot wait for the next parliamentary session. In practice, it has been used by successive central governments as a tool for bypassing parliamentary debate on controversial legislation and for implementing executive policy preferences without the scrutiny that parliamentary process provides.

The use of ordinances has accelerated under the Modi government, which has promulgated ordinances at a higher frequency than most predecessor governments. More significantly, the government has promulgated ordinances on matters of major constitutional significance, including the Jammu and Kashmir Reorganization ordinances of 2019, the Banking Regulation

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Amendment ordinance, the Farm Laws ordinances (later enacted as legislation and then repealed after massive farmers' protests in 2020-2021), and the ordinances related to various economic regulatory changes.

The constitutional validity of ordinances that are promulgated not because of genuine urgency but because the government prefers to avoid parliamentary scrutiny has been questioned by constitutional scholars. The Supreme Court, in R.C. Cooper v. Union of India (1970), held that the ordinance power is subject to judicial review on the ground that the subjective satisfaction of the President can be shown to be based on irrelevant considerations. But the threshold for invalidating an ordinance has been set very high by subsequent decisions, and the practical availability of judicial review as a check on the misuse of ordinance power has been very limited.

8.4 Governmental Impunity and the Constitutional Accountability Deficit

Perhaps the most damaging structural feature of the contemporary constitutional order is the near-complete absence of meaningful accountability for governmental conduct. Constitutional accountability, in the standard theoretical framework, operates through four mechanisms: electoral accountability (governments that fail can be voted out), legislative accountability (governments must answer to parliament for their conduct), judicial accountability (government action is subject to legal challenge), and civic accountability (governments are subject to scrutiny by a free press and active civil society).

Each of these mechanisms has been significantly weakened in the period 2014-2026. Electoral accountability is compromised by the use of state resources for campaign purposes, the manipulation of electoral rolls, the dominance of the media environment by pro-government messaging, and the use of the investigative and prosecutorial machinery against political opponents. Legislative accountability is compromised by the anti-defection law, the weakening of parliamentary procedures, and the culture of government majority that treats parliamentary scrutiny as an obstacle rather than a constitutional obligation. Judicial accountability is compromised by the appointments crisis, the culture of judicial deference to executive authority on politically sensitive matters, and the glacial pace of constitutional adjudication. Civic accountability is compromised by the shrinking of civil society space through FCRA restrictions, the intimidation of journalists through sedition and defamation law, and the algorithmic amplification of pro-government narratives through social media.

The cumulative effect of the weakening of all four accountability mechanisms simultaneously is a constitutional order in which governmental power is exercised with growing impunity: a power that faces fewer and fewer effective constraints and that imposes lower and lower costs for constitutional violations.

CHAPTER NINE: DIGITAL AUTHORITARIANISM AND THE CONSTITUTIONAL RIGHT TO PRIVACY

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9.1 The Digital Personal Data Protection Act and Its Constitutional Inadequacy

The Digital Personal Data Protection Act, 2023 (DPDPA), which finally gives legislative form to the constitutional right to privacy established in the Puttaswamy case of 2017, was welcomed by some as a long-overdue statutory protection for data rights. Its operational rules, the Digital Personal Data Protection Rules of 2025, provide more detailed guidance on its implementation. But a careful constitutional analysis of the DPDPA reveals that it is not the robust privacy protection framework that the Puttaswamy judgment's mandate of a "just, fair, reasonable, and proportionate" legal framework for the processing of personal data would require.

The most fundamental deficiency of the DPDPA is its broad exemption for state surveillance. Section 17(1) of the Act exempts from its data processing obligations the processing of personal data for reasons related to "the security of the State" and "the prevention of offences." These exemptions are so broadly framed that they effectively exclude the most important context of privacy protection, namely the state's collection and processing of data about citizens, from the Act's regulatory reach. The Act protects privacy against private companies that handle commercial data but provides minimal protection against the state that conducts surveillance.

This is not accidental. The DPDPA reflects a deliberate choice by the government to create a data protection framework that applies to the private sector (which is subject to the consent and notice requirements of the Act) while preserving the government's own surveillance prerogatives. This choice is constitutionally problematic because the Puttaswamy judgment, which is the constitutional authority for the Act's existence, identified state surveillance as a primary concern and held that any statutory framework for data protection must address state data collection as well as private sector data processing.

9.2 The Aadhaar Surveillance Infrastructure and Its Constitutional Expansion

The Aadhaar system, which now covers nearly the entire Indian population of approximately 1.4 billion people, represents the world's largest biometric database and one of the most extensive surveillance infrastructure systems in any democracy. The constitutional analysis of Aadhaar as surveillance infrastructure, rather than merely as a welfare delivery tool, has not received the attention it deserves.

The consolidation of the Aadhaar number as a universal identifier linking an individual's biometric identity to their tax records, bank accounts, mobile phone numbers, PAN (Permanent Account Number), health records, and an expanding range of other databases means that a government with access to this integrated system has, in principle, the capacity to track the financial transactions, communications, travel, medical history, and welfare utilization of every resident of India. Whether the government actually uses this capacity for surveillance, and on what terms, is impossible to determine without access to classified information about how NATGRID and other intelligence integration systems operate.

The 2025 DPDPA Rules' requirement that Aadhaar usage by data fiduciaries be in compliance with the UIDAI's norms, which the government has described as a protection against misuse, does not address the fundamental constitutional problem: a surveillance infrastructure of this

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scope and integration, in the absence of an independent oversight mechanism and a statutory framework governing state access to integrated data, is inconsistent with the constitutional right to privacy regardless of the government's stated intentions for its use.

The constitutional comparison with analogous developments in other countries is instructive. The European Union's General Data Protection Regulation (GDPR) includes explicit protections against state surveillance that go significantly beyond anything in the DPDPA. The German Federal Constitutional Court has, in a series of decisions, established constitutional limits on state data collection and integration that are far more stringent than anything the Indian Supreme Court has applied to the Aadhaar system. The constitutional framework of the United Kingdom's Investigatory Powers Act (the "Snoopers' Charter"), which has been subjected to extensive judicial scrutiny by the European Court of Human Rights, provides a level of oversight and judicial authorization for surveillance that the Indian framework entirely lacks.

9.3 Social Media, Information Control, and the New Constitutional Frontier

The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 and subsequent amendments through 2025 have created a legal framework for the regulation of digital platforms and social media that raises serious constitutional concerns about freedom of speech and expression.

The Rules require "significant social media intermediaries" (platforms with more than 5 million users) to appoint Indian-resident Chief Compliance Officers, Nodal Contact Persons, and Grievance Officers; to implement a mechanism for the takedown of content within specified time periods in response to government orders; and to "trace the originator" of encrypted communications when required by government orders. The traceability requirement is particularly concerning: it effectively requires the breaking of end-to-end encryption on private messaging platforms, which would fundamentally compromise the privacy and security of all users of such platforms, not merely the specific communications that are the subject of a government request.

The constitutionality of the IT Rules' traceability requirement has been challenged before the Madras High Court (in the Telegram/Facebook challenge) and before the Supreme Court. As of early 2026, the constitutional adjudication of this question remains incomplete. The stakes are enormous: if the traceability requirement is constitutionally valid, the Indian government will have a legal mandate to require the breaking of private encrypted communications, a capability that is constitutionally unprecedented in democratic societies.

The broader IT Rules framework for content regulation has also been challenged as unconstitutional. The requirement that platforms remove content in response to government orders within 36 hours of receipt of the order, combined with the lack of any judicial authorization requirement for such orders, means that the government effectively has a power to censor online speech that is exercised without judicial oversight. The constitutional requirement, established in Shreya Singhal, that speech restrictions must be specific, narrow, and subject to the oversight of a court, is not satisfied by a system in which the executive both identifies the speech to be restricted and enforces its removal without judicial intervention.

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CHAPTER TEN: THE PATH TO CONSTITUTIONAL RECONSTRUCTION

THEORIES, MODELS, AND FRAMEWORKS FOR A GENUINELY PEOPLE'S CONSTITUTION

10.1 The Theoretical Case for Constitutional Replacement

The argument that India needs not amendment but replacement of its Constitution is not a new one. It has been made from various political positions: from the Hindu nationalist right (which seeks a constitution rooted in Bharatiya cultural values rather than Western liberal categories), from the socialist left (which argues that the constitutional order is irredeemably committed to capitalism and class privilege), from the federalist tradition (which argues that the centralizing character of the existing constitution cannot be reformed from within because those who benefit from centralization control the amendment process), and from the Ambedkarite tradition (which argues that a constitution built on colonial foundations cannot deliver the social revolution that Ambedkar envisioned).

This textbook argues for constitutional reconstruction from a different and, we believe, more principled foundation: from the perspective of constitutional democracy theory, human rights jurisprudence, and the record of systematic failure that has been documented in the preceding ten parts.

The theoretical argument for constitutional replacement rather than amendment rests on three pillars.

The first pillar is the argument from colonial contamination. A constitution that is approximately sixty percent derived from a colonial administrative statute, whose structural logic carries forward the institutional design of colonial governance, and whose amendment process has been used repeatedly to perpetuate rather than dismantle colonial institutions, cannot be reformed into a genuinely postcolonial constitutional order through incremental textual change. The colonial DNA runs too deep. It shapes not merely specific provisions but the fundamental institutional choices (the weak federalism, the strong executive, the justiciable civil-political rights combined with non-justiciable social-economic rights, the broad preventive detention authorization, the colonial police architecture) that determine how the constitutional order functions in practice.

The second pillar is the argument from constitutional legitimacy. As noted in earlier Parts, the Constituent Assembly that drafted the Constitution was not elected by universal suffrage and did not represent the majority of India's population. The claim that the Constitution derives its authority from "We, the People" is historically contestable. More importantly, a constitution that has been in force for seventy-five years, that has been extensively amended (over 100 amendments as of 2025), that has been significantly reinterpreted by judicial decisions that the original framers would not have anticipated, and that governs a society that has been transformed almost beyond recognition from the society of 1950, can no longer claim to represent an authentic expression of the sovereign constituent power of the Indian people. The democratic

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legitimacy argument requires that the Indian people be given a genuine opportunity, through a genuinely democratic process, to give themselves a constitution of their own making.

The third pillar is the argument from cumulative dysfunction. The record documented in this textbook is not a record of a constitutional order that is working imperfectly but trending toward its own ideals. It is a record of a constitutional order that has, in significant respects, been moving away from its own ideals: toward greater executive concentration, toward greater communal asymmetry, toward weaker federalism, toward more systematic victimhood of the marginalized, toward greater constitutional impunity for the powerful. The cumulative dysfunction is not correctable through incremental amendment because those who control the amendment process are, in many cases, the beneficiaries of the dysfunction. A genuinely different constitutional order requires a genuinely different constitutional process.

10.2 Models from Comparative Constitutional Theory

The comparative constitutional literature offers several models for constitutional reconstruction that are relevant to the Indian context.

The first model is the deliberative constituent assembly model, exemplified by the South African constitutional process of 1993-1996 and the Icelandic constitutional process of 2010-2012 (though the Icelandic process was ultimately not enacted). In this model, a specifically elected or appointed constituent assembly drafts a new constitution through a deliberative process that includes extensive public consultation, technical expertise, and transparent democratic deliberation. The South African model is particularly instructive because it addressed a constitutional transformation of comparable magnitude to what India requires: a transition from an unjust, unrepresentative, and structurally discriminatory constitutional order to a genuinely democratic and rights-based one.

The South African Constitution of 1996 embodies several constitutional features that India's constitution lacks and that a genuinely reformed Indian constitution should include: justiciable social and economic rights (including the right to adequate housing, healthcare, food, water, and social security), explicit recognition of multiple sources of law including customary law, strong constitutional protection for local government, an independent judicial appointment mechanism, explicit constitutional provisions on public administration and accountability, and a Bill of Rights that is directly enforceable against both state and private actors.

The second model is the participatory constitutional convention model, drawing on the emerging literature of deliberative democracy and constitutional crowdsourcing. The Icelandic process, despite its ultimate failure to be enacted by Parliament, demonstrated the possibility of genuine popular participation in constitutional drafting through digital platforms, public meetings, and ongoing feedback loops. The Chilean constitutional processes of 2021-2022 and 2023 (the latter also ultimately rejected by referendum) represent more recent experiments with high-participation constituent processes that, despite their ultimate failures to produce adopted constitutions, have generated important learnings about the design of inclusive constitutional processes.

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The third model is the transformative constitutionalism model developed by Karl Klare and subsequently elaborated in the South African context by Theunis Roux, Dennis Davis, and others. Transformative constitutionalism recognizes that a constitution that genuinely addresses historical injustice must be not merely procedurally democratic but substantively committed to structural transformation: to the dismantling of inherited hierarchies of power, wealth, and social position, and to the active construction of a more equal social order. This model requires constitutional provisions that are justiciable, that impose affirmative duties on the state, and that are interpreted by courts in light of the transformative purpose they are designed to serve.

10.3 The Content of a Reconstructed Indian Constitution: Core Proposals

Any program of genuine constitutional reconstruction for India must, at a minimum, address the following structural deficiencies that have been identified throughout this textbook.

On the question of colonial foundations: a reconstructed constitution must excise the colonial DNA from the document's institutional architecture. This requires the complete replacement of the Police Act of 1861 with a constitutionally mandated framework for democratic, community-accountable, and rights-respecting policing. It requires the abolition of preventive detention as a constitutional instrument and its replacement with a framework of criminal law that respects the presumption of innocence and the right to bail. It requires the repeal or radical reform of all colonial-era statutes that remain in force, including the sedition equivalent, the FCRA as currently applied, and the various special laws that have been used to criminalize political opposition.

On the question of federalism: a reconstructed constitution must establish genuinely asymmetric federalism that recognizes the enormous diversity of India's regions, economies, cultures, and political conditions. This requires a reconstituted Rajya Sabha that genuinely represents state interests rather than national party interests (perhaps through direct election by state assemblies or through proportional representation by state), a reformed Seventh Schedule that gives states greater effective control over their legislative domains, a reformed fiscal framework that gives states sufficient financial independence to discharge their constitutional functions, and the abolition of the Governor's office or its radical transformation into a directly elected constitutional position with defined and limited functions.

On the question of executive power: a reconstructed constitution must establish genuine checks on the concentration of executive power in the Prime Minister. This requires a reformed anti-defection law that preserves the freedom of individual legislators to vote according to conscience on matters of genuine constitutional importance, a reformed Prime Ministerial appointment process that requires parliamentary confirmation, constitutional term limits for the Prime Minister, and constitutionally mandated minimum sitting days for Parliament with binding requirements for committee scrutiny of significant legislation.

On the question of fundamental rights: a reconstructed constitution must make social and economic rights fully justiciable. The right to education, health, housing, food, water, social security, and a minimum income must be enforceable constitutional rights, not merely directive principles. The scope of Article 21 should be constitutionally defined to include these rights

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explicitly, ending the uncertainty created by judicial interpretation of the article's scope. The equal protection guarantee must be extended to the private sector, including the labor market, the housing market, and the provision of services, to prevent discriminatory exclusion by private actors that the Constitution currently does not directly address.

On the question of electoral democracy: a reconstructed constitution must include explicit constitutional provisions on political party governance, transparency in political finance, and the independence of the Election Commission. Political parties that seek and exercise public power should be constitutionally required to maintain internal democracy, to disclose their sources of funding in real time, and to comply with constitutional equality requirements in their operations. The Election Commission should be constituted through a process that is genuinely independent of the government whose elections it administers.

On the question of the judiciary: a reconstructed constitution must reform both the appointment process and the accountability framework for judges. An independent judicial appointments commission, whose members are appointed through a process that is transparent, that involves representatives of the legal profession, civil society, and state governments, and that is insulated from executive domination, should replace both the current collegium and the government-dominated alternative that the NJAC Act proposed. A parallel framework for judicial accountability, including a transparent judicial complaints process and a disciplinary mechanism that is effective without being subject to political manipulation, must be constituted.

On the question of local self-government: a reconstructed constitution must deliver genuine political devolution to the local level. The 73rd and 74th Amendments established the framework; what is needed is its full implementation and strengthening. This requires constitutional specification of the minimum functions and finances that must be devolved to local bodies, constitutional protection for the tenure of elected local government representatives, and constitutional recognition of gram sabhas (village assemblies) as primary constituent units of democratic governance.

On the question of secularism: a reconstructed constitution must articulate a clearer and more robust model of constitutional secularism. The current model, which the Supreme Court has described as "positive secularism" (the state aiding all religions equally) rather than French laicite (the state's complete non-involvement in religion), has proven insufficiently clear in its application and insufficiently protective of minority religious rights. A reconstructed constitution should specify that the state may not use public resources to fund, promote, or symbolically favor any religion, that religious communities have a right of self-governance that is subject to constitutional equality requirements within the community (so that internal religious discrimination cannot be justified by reference to religious autonomy), and that anti-discrimination law applies to religious institutions in specified domains.

10.4 The British Freedom Model: What Decolonization Actually Requires

The discourse about "decolonizing" the Indian Constitution has been captured, in the current political context, by a Hindu nationalist narrative that frames decolonization as the replacement of Western liberal constitutional categories with Bharatiya cultural values. This narrative is

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intellectually dishonest and politically dangerous: it uses the language of anti-colonialism to advance an agenda of majoritarian nationalism that is itself a form of cultural imperialism against India's own minorities, dalits, adivasis, and non-Hindu citizens.

Genuine decolonization of the Indian Constitution would require something quite different: the removal of the specific institutional features that the British colonial apparatus embedded in the constitutional order to serve the purposes of colonial control, and their replacement with institutions designed to serve the interests and advance the dignity of all Indian people.

The specific colonial features that a genuine decolonization program would address include, as identified throughout this textbook: the preventive detention architecture, the police organization based on the 1861 model, the sedition-type offenses, the broad executive emergency powers, the centralized administrative model that treats sub-national units as administrative divisions rather than democratic units, the colonial revenue and land administration structures, the colonial-era forest laws, the evidence laws that place unreasonable burdens on accused persons, and the judicial system that is structured around the needs of the colonial administrative state rather than the access-to-justice needs of citizens.

These colonial inheritances are not British cultural values: they are British administrative tools for the governance of a subject population. Replacing them does not require rejecting Western liberal constitutionalism any more than building a democratic system requires being Western. It requires being honest about what the colonial inheritance has cost the Indian people and being determined to build something genuinely different.

The comparative model of British constitutional democracy, ironically, offers some important lessons for Indian constitutional reform: the UK's Human Rights Act, which incorporates the European Convention on Human Rights into domestic law; the devolution settlements that have given Scotland, Wales, and Northern Ireland genuine legislative autonomy; the reforms to the House of Lords that have partially democratized the upper chamber; the Freedom of Information Act that has created a statutory right of access to governmental information; the Constitutional Reform Act of 2005 that established the UK Supreme Court and separated the judicial from the legislative function in ways that the Indian Constitution never did. These are not perfect models, but they represent the direction of constitutional evolution that a genuine democracy undertakes.

10.5 The Jurisprudential Foundations of Constitutional Reconstruction: From Kelsenian Norm to Deweyan Democracy

The jurisprudential foundations of the case for constitutional reconstruction in India draw on multiple theoretical traditions that this final section brings together into a coherent framework.

Hans Kelsen's pure theory of law established the foundational jurisprudential insight that the validity of legal norms ultimately rests on a basic norm (Grundnorm) that is not itself legally grounded but is instead a presupposition of the legal system. Applied to constitutional theory, this means that the authority of the Constitution rests on a presupposition of constituent power: the idea that the people, as the ultimate source of political authority, have authorized the constitutional order. When that presupposition is undermined, either because the constituent

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process was not genuinely representative (as was the case with the Indian Constituent Assembly) or because the constitutional order has so thoroughly failed its own promises that the people's tacit authorization can no longer be presumed, the Grundnorm is disrupted and the question of constitutional foundation becomes politically live.

Ronald Dworkin's interpretive theory of law argues that law is not merely a set of rules but an interpretive practice through which the community gives expression to its best understanding of its principles. Applied to constitutional theory, this means that the Constitution's authority depends on its being the best available expression of the political community's fundamental principles, and that when constitutional institutions systematically fail to embody those principles, the authority of the Constitution is diminished. Dworkin's theory supports constitutional transformation when the gap between constitutional text and constitutional practice, between what the Constitution promises and what it delivers, becomes so large that the Constitution can no longer serve as a credible expression of the community's fundamental commitments.

John Rawls' theory of justice, and specifically his concept of the "basic structure" of society as the primary subject of justice, provides a framework for evaluating constitutional orders in terms of their outcomes for the least advantaged members of society. A constitutional order that is just, on Rawlsian terms, must be organized to maximize the long-term expectations of the least advantaged group while respecting the basic liberties of all. The Indian constitutional order, evaluated by this criterion, has not been just: its allocation of constitutional protections, institutional access, and state resources has systematically favored the advantaged against the least advantaged. The Rawlsian framework supports fundamental constitutional reconstruction to achieve a more just basic structure.

John Dewey's democratic theory, which understands democracy not as a set of institutional arrangements but as a way of associated living in which citizens participate as equals in the decisions that affect their lives, provides the most powerful normative foundation for constitutional reconstruction. A constitution that is genuinely democratic, on Deweyan terms, must create conditions for genuine democratic participation at every level of public life: conditions of equality in the public sphere, conditions of access to information and education, conditions of effective political participation, and conditions of economic security that make political participation meaningful. The Indian Constitution has aspired to these conditions but has failed to create the institutional infrastructure that would realize them.

Upendra Baxi's jurisprudence of "suffering and resistance," which insists that constitutional theory must be grounded in the experience of those who suffer under unjust constitutional orders and must be responsive to their resistance, provides a final and essential element of the jurisprudential foundation for constitutional reconstruction. The history of India's constitutional order, read through the lens of those who have suffered under it, from the untrial prisoner to the displaced adivasi, from the Muslim victim of communal violence denied justice to the farmer who has lost their land to a company with government connections, from the worker denied their labor rights to the journalist imprisoned for reporting the truth, is a history that demands a response. That response is not reform at the margins. It is constitutional reconstruction at the roots.

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10.6 The Process of Constitutional Reconstruction: Democratic Legitimacy and Transformative Change

The content of a new constitution is inseparable from the process through which it is made. A constitution made through a process that is genuinely inclusive, deliberative, and democratic has a legitimacy that no amount of substantive excellence in content can create if the process itself is captured, manipulated, or exclusive.

The Bibek Debroy proposal, made in 2024, for a new constitution drafted on first principles is a starting point for the discussion but not a sufficient answer. The institutional design of the constitutional drafting process is the crucial question. A drafting process controlled by the ruling party, or dominated by urban elites and constitutional specialists, or conducted in English in New Delhi, will not produce a constitution that genuinely represents the sovereign will of the Indian people.

A genuinely democratic constitutional reconstruction process for India would require, at minimum: a specific election of a constitutional convention that is proportionally representative of all regions, languages, castes, religions, and genders; a drafting process that is conducted through public deliberation in multiple languages with genuine opportunities for the participation of non-elite citizens; a mechanism for the direct popular consultation of communities that are currently most affected by constitutional dysfunction, including tribal communities, dalits, religious minorities, informal workers, and rural women; a role for civil society organizations, including those whose FCRA registrations have been cancelled, in the deliberative process; and a final referendum in which the proposed constitution is submitted to the direct approval of the Indian people.

This is not an impossibly utopian program. South Africa did it. Iceland attempted it. Even the Indian Constituent Assembly, despite its limitations, demonstrated that a large and diverse society can engage in the serious constitutional deliberation that constitution-making requires. The question is not whether it is possible but whether those who hold power today will allow it. And if those who hold power today will not allow it, the question becomes: what forms of constitutional resistance, civic pressure, legal challenge, and democratic mobilization are available to those who recognize the need for change?

10.7 The Role of Constitutional Resistance and Social Movements

The jurisprudence of constitutional resistance, developed by scholars including Robin West, Sandra Levinson, and in the Indian context by Jairus Banaji and Kancha Ilaiah, argues that when formal constitutional institutions fail to enforce constitutional rights, the responsibility for constitutional defense passes to civil society and social movements. Constitutional resistance is not merely political agitation: it is a form of constitutional practice, of citizens asserting their constitutional rights against a state that refuses to recognize them.

The history of constitutional resistance in India is rich and instructive. The independence movement itself was a form of constitutional resistance against the colonial order. The anti-Emergency movement of 1977 was a form of constitutional resistance against the perversion of

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parliamentary democracy. The Chipko movement was a form of constitutional resistance against the violation of tribal forest rights. The dalit assertion movements, from the Mahad Satyagraha of 1927 to the post-Bhima Koregaon mobilizations of 2018-2020, are forms of constitutional resistance against the violation of constitutional equality. The farmers' protests of 2020-2021 were a form of constitutional resistance against legislation that violated constitutionally protected livelihoods. The anti-CAA protests of 2019-2020, including the Shaheen Bagh movement, were a form of constitutional resistance against the violation of constitutional equality and secular citizenship.

These movements of constitutional resistance have achieved partial victories: they have reversed specific policies, have created political costs for constitutional violations, have mobilized previously demobilized citizens, and have generated solidarity across otherwise divided social groups. But they have not, by themselves, been sufficient to generate the structural constitutional reform that India requires, because the constitutional order itself provides the powerful with too many tools for the suppression of resistance and too many mechanisms for the delay of accountability.

The final jurisprudential lesson of this analysis is that constitutional reconstruction in India will require the convergence of three forces: intellectual, political, and popular. The intellectual contribution, to which this textbook is offered as a small addition, is the development of a rigorous, honest, and comprehensive analysis of what is wrong with the existing constitutional order and what a better order would look like. The political contribution requires the development of a political coalition capable of pursuing constitutional reconstruction, which means a coalition that spans the regional parties, the left, the progressive center, and the civic mobilizations that have emerged in the post-2014 period. The popular contribution requires the mobilization of those who have the most to gain from constitutional transformation: the poor, the marginalized, the excluded, the victimized, the silenced, and all those for whom the republic of broken promises has been most costly.

The three forces cannot operate separately. The intellectual work must be grounded in the lived experience of constitutional victimhood. The political coalition must be held accountable by the popular movements that power it. And the popular movements must be informed by the intellectual framework that explains what they are fighting for and what a victory would look like.

This textbook is offered in the spirit of that convergence. It is not a neutral document. It is a contribution to a cause: the cause of a genuinely people's constitution for India, a constitution that delivers on the promise of the republic that was announced on January 26, 1950 and that has, in too many ways and for too many people, remained a promise rather than a reality.

CONCLUDING OBSERVATIONS TO PART ELEVEN

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Part Eleven has argued, across ten chapters, that the failures of the Indian constitutional order are not incidental but structural, not temporary but systemic, and not reformable through incremental amendment but requiring fundamental reconstruction.

The constitutional economy of corruption is not a cultural accident but an institutional consequence of a constitutional design that creates enormous discretionary power without adequate accountability mechanisms. The victimhood of the poor, the marginal, the adivasi, the dalit, the Muslim, the woman, the worker, is not a failure of implementation but a consequence of a constitutional design that protects formal rights without creating the institutional infrastructure for their substantive realization. The nationalist distortion of the constitutional order is not a temporary aberration but the product of constitutional silences on party governance, electoral finance, and the relationship between majoritarian democracy and minority rights that have always been available for capture by majoritarian forces.

The engineering of electoral autocracy through One Nation One Election, the collapse of constitutional secularism through the CAA and the Waqf Amendment, the constitutional colonialism of the UAPA and related laws, the class character of constitutional economics, the executive supremacy crisis, and the digital authoritarianism that is being built on the inadequate foundations of the DPDPA, these are not isolated developments. They are the contemporary manifestation of the structural failures that this textbook has been tracing to their origins in the colonial DNA of the Constitution, the limitations of the Constituent Assembly process, and the political economy of a state captured by those who benefit from its dysfunction.

The constitutional theories that support reconstruction, from Kelsen's jurisprudence of constituent power through Dworkin's interpretive theory through Rawls' theory of justice to Baxi's jurisprudence of suffering, converge on a single conclusion: a constitutional order that systematically fails its own most fundamental promises has lost its claim to the obedience of those it has failed, and the project of creating a genuinely just constitutional order is both morally required and democratically legitimate.

As the Journal of Democracy's analysis of India's contemporary democratic decline makes clear, India is maintaining the trappings of democracy while increasingly harassing the opposition, attacking minorities, and stifling dissent. Journal of Democracy The V-Dem Democracy Report 2025 confirms India's continued classification as an electoral autocracy, ranking 100 out of 179 countries on the Liberal Democracy Index, and places responsibility on what it terms the ruling anti-pluralist, Hindu-nationalist party's documented deteriorations in freedom of expression, independence of media, and attacks on civil society. The Wire Academic research published in 2025 in the Asian Studies Review identifies the combination of illiberal, communal, and majoritarian tendencies that run through three key historical moments: the framing of the Constitution itself, the Emergency period, and the rise of Hindu nationalism, demonstrating that these are not separate crises but expressions of a single structural problem within Indian constitutionalism. Taylor & Francis Online

Part Twelve of this textbook will turn to the question of international law and its relationship to Indian constitutional reform: the obligations India has assumed under international human rights treaties, the ways in which those obligations have been systematically violated, the international

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mechanisms available for accountability, and the relationship between India's international standing and its internal constitutional crisis. The argument of this entire work proceeds toward a single comprehensive conclusion: that India needs, and the Indian people deserve, a constitution that is genuinely their own.

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Part Twelve: International Law, Human Rights Obligations, and the Global Context of India's Constitutional Crisis will follow.

PART TWELVE: INDIA BEFORE THE WORLD

International Law, Human Rights Obligations, the Failure of Sovereign Accountability, and the Global Dimensions of India's Constitutional Crisis

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PREFACE TO PART TWELVE

The constitutional crisis of India is not a domestic affair sealed within the geographic and legal borders of the republic. It is an internationally visible, internationally documented, and internationally consequential crisis that has reshaped how the world perceives India, how India's neighbors relate to it, and how the international human rights system has been tested by its encounter with a state that is formally a democracy, formally committed to treaty obligations, and formally sovereign, while simultaneously demonstrating a systematic pattern of constitutional failure that has been catalogued with unusual thoroughness by the United Nations, by regional human rights bodies, by international civil society, and by the governments of states that are India's partners, allies, and critics.

Part Twelve of this textbook undertakes an analysis that is both broader and deeper than any that has preceded it. Broader, because it situates India's constitutional predicament within the global context of democratic backsliding, authoritarian nationalism, and the crisis of the international human rights order that characterizes the third decade of the twenty-first century. Deeper, because it traces the specific connections between the internal constitutional architecture examined in the preceding eleven parts and the external consequences of that architecture for India's international standing, its treaty obligations, its neighborly relations, its role in international institutions, and its own claims to global moral leadership.

The argument of this Part has several threads that are woven together throughout its chapters. The first thread is jurisprudential: the relationship between international law and constitutional law in India is deeply ambiguous, and that ambiguity has been systematically exploited by the Indian state to resist international accountability while claiming international legitimacy. The second thread is historical: the British colonial government used international law as an instrument of empire, and independent India inherited both the formal apparatus of international engagement and the colonial habit of using international law selectively, as a shield against criticism rather than as a genuine constraint on state power. The third thread is political: the rise of Hindu nationalist governance has not merely changed India's domestic constitutional practices but has transformed its foreign policy in ways that have alienated its neighbors, undermined its

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regional influence, and complicated its aspirations to global leadership. The fourth thread is analytical: the connection between internal constitutional failure and external foreign policy failure is not coincidental but structural, and understanding that structure is essential to understanding why constitutional reform is not merely a domestic priority but a geopolitical necessity.

The reader who has followed the preceding eleven parts of this textbook will recognize all of these threads from earlier discussions. Part Twelve draws them together and extends them into the international arena, where the consequences of India's constitutional choices are visible with a clarity that domestic political management sometimes obscures.

CHAPTER ONE: THE ARCHITECTURE OF INTERNATIONAL LEGAL OBLIGATION IN THE INDIAN CONSTITUTIONAL ORDER

1.1 The Constitutional Status of International Law: A Framework Analysis

The relationship between international law and the domestic constitutional order is one of the foundational questions of modern jurisprudence. The two principal theoretical frameworks that govern this relationship, monism and dualism, lead to very different consequences for the place of international obligations in domestic law. Under a monist system, such as the Netherlands, international law automatically becomes part of domestic law upon ratification of a treaty, without requiring separate legislative incorporation. Under a dualist system, such as the United Kingdom and its constitutional descendants, international law and domestic law are separate systems, and a treaty obligation does not become part of domestic law until Parliament has enacted implementing legislation.

The Indian constitutional framework follows a broadly dualist approach, but with important complications that have generated a rich body of case law and considerable academic controversy.

Article 51 of the Constitution, which is part of the Directive Principles of State Policy and therefore not directly justiciable, directs the state to endeavor to foster respect for international law and treaty obligations. This provision is aspirational rather than obligatory in any legally enforceable sense. It reflects the framers' awareness of India's new status as an internationally recognized sovereign state with obligations under the nascent United Nations system, and their desire to signal India's commitment to the international legal order. But it does not, by itself, incorporate international law into Indian domestic law or make international treaty obligations directly enforceable before Indian courts.

The question of parliamentary incorporation is governed by Article 253, which confers on Parliament the power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement, or convention with any other country or countries, or any decision made at any international conference, association, or other body. This provision is significant because it places treaty implementation in the exclusive power of Parliament,

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overriding the federal distribution of legislative power: even where a treaty concerns a subject that falls within the State List of the Seventh Schedule, Parliament can legislate to implement it by virtue of Article 253. But Article 253 is an enabling provision, not an obligation: it empowers Parliament to implement treaties but does not require it to do so, and does not make unimplemented treaty obligations directly enforceable.

The practical consequence of this constitutional framework is a system in which India can ratify international human rights treaties, binding itself under international law to the obligations they contain, while simultaneously failing to enact implementing legislation that would make those obligations enforceable before domestic courts. Citizens who wish to rely on treaty-guaranteed rights before Indian courts face the challenge that unimplemented treaties are not, in strict constitutional doctrine, sources of enforceable rights.

The Supreme Court has developed a significant body of doctrine addressing this challenge through the principle of harmonious construction: when domestic law is ambiguous, courts should interpret it in a manner consistent with India's international obligations. The Court has also held, in cases such as Vishaka v. State of Rajasthan (1997), that in the absence of domestic legislation on a particular matter, courts may use international conventions to fill the gap, treating international standards as part of the domestic legal order by judicial incorporation. The Vishaka case, in which the Court used the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Vienna Declaration to develop guidelines against sexual harassment at the workplace, is the clearest example of this judicial approach to the incorporation of international human rights standards.

This judicial approach, however valuable, has significant limitations. It depends on the willingness of courts to look to international standards, which has been uneven across different subjects and different periods. It cannot override clear domestic legislation that is inconsistent with international obligations. And it operates at the discretion of the judiciary rather than as a mandatory legal requirement, meaning that the enforceability of international human rights norms in Indian courts depends on the willingness of individual judges rather than on the constitutional command.

The result is a constitutional architecture that places India in an anomalous position in international law: a state that has ratified numerous human rights treaties, that participates actively in international human rights institutions, and that claims international legal status as a law-abiding member of the international community, while simultaneously maintaining a domestic legal order in which treaty obligations are not directly enforceable and in which systematic violations of those obligations continue without domestic legal remedy. This anomaly is not accidental. It is a structural feature of the constitutional design that has been preserved, with small modifications, over seven and a half decades of independent statehood. It reflects the conscious choice of Indian governments of various political persuasions to maintain the international legitimacy that treaty ratification provides while preserving the domestic freedom of action that the absence of enforceable treaty obligations allows.

1.2 India's Treaty Ratification Record: Selective Engagement as Constitutional Strategy

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The pattern of India's engagement with the international human rights treaty system reveals a strategic approach to selective ratification that is deeply revealing of the constitutional philosophy of successive Indian governments. India has ratified several of the core international human rights instruments: the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), and the Convention on the Rights of Persons with Disabilities (CRPD).

But India has notably not ratified several instruments whose obligations would create significant constraints on domestic state practice. India has not ratified the UN Convention Against Torture (UNCAT) despite repeated recommendations from the Universal Periodic Review process, despite 2,739 custodial deaths reported by the National Human Rights Commission in 2024 alone, and despite widespread and well-documented evidence of the systematic use of torture in police custody. The Global Torture Index 2025 documents India's constitutional prohibitions on torture alongside the conspicuous absence of any specific national legislation criminalizing torture, and notes that despite formally inviting international oversight, India effectively blocks visits by mechanisms like the UN Special Rapporteur on Torture. This combination of formal openness and practical blockade is a masterpiece of international legal management: India avoids the stigma of an outright refusal while achieving the same practical result of insulating its security apparatus from international scrutiny.

India has not ratified the Second Optional Protocol to the ICCPR, which aims at the abolition of the death penalty. This is not surprising given that India retains capital punishment and continues to use it, but it is significant in the context of India's claims to democratic leadership: most of the world's established democracies have abolished the death penalty or imposed a moratorium on its use, and India's retention of capital punishment, combined with evidence of its discriminatory application against the poor and the marginalized, is a point of significant international criticism.

India has not ratified the International Convention for the Protection of All Persons from Enforced Disappearance, which would create obligations to criminalize enforced disappearance and to provide remedies to victims and their families. The significance of this non-ratification becomes apparent when one considers the documented record of enforced disappearances in Jammu and Kashmir, where the Association of Parents of Disappeared Persons has documented thousands of cases of persons who disappeared into custody and were never accounted for. The Armed Forces (Special Powers) Act, which continues in effect in Jammu and Kashmir and several northeastern states, provides effective immunity from prosecution to security forces for serious human rights abuses, and creates a constitutional framework in which enforced disappearances cannot be meaningfully prosecuted.

India has ratified the ICCPR but has done so without accepting the Optional Protocol, which would allow individuals to submit communications to the Human Rights Committee alleging violations of their Covenant rights. This means that Indian citizens who are victims of ICCPR violations cannot access the Committee's individual complaints mechanism. They can rely only

on India's participation in the state reporting process and in the Universal Periodic Review, neither of which provides enforceable individual remedies.

The pattern is clear and consistent across decades and across governments of different political persuasions: India ratifies the instruments that provide international legitimacy at minimal cost to domestic state power, while refusing to ratify or accept the mechanisms that would create meaningful accountability for the systematic violations that its own human rights commission documents.

The jurisprudential analysis of this pattern begins with the foundational observation of legal theorist Martti Koskenniemi that international law operates in a field of indeterminacy: it is simultaneously an instrument for the expression of shared moral commitments and a tool of statecraft available to be used by powerful states to maximize their own interests while minimizing the constraints on their freedom of action. India's selective engagement with the international human rights treaty system is a sophisticated illustration of this indeterminacy. It uses international law's legitimizing function while resisting its constraining function. It speaks the language of human rights while preserving the institutional arrangements that enable their systematic violation.

1.3 The Universal Periodic Review: Performance and Reality

The Universal Periodic Review (UPR) process, established by the UN Human Rights Council in 2006, provides a mechanism through which the human rights record of every UN member state is reviewed periodically by the Council. India has undergone four UPR cycles, with its most recent review in 2022 (for the third UPR cycle). The fourth cycle review is scheduled for 2026.

The UPR process is, by the standards of international accountability, a relatively gentle one: it relies on a combination of the state's own report, reports from UN bodies and agencies, and civil society reports, and produces recommendations that states may accept or reject. Accepted recommendations are not legally enforceable; states that accept UPR recommendations and then fail to implement them face no more than the political embarrassment of being noted as non-compliant in the subsequent cycle.

India's engagement with the UPR has been a study in the art of accountability theater. India's state reports to the UPR document an impressive array of legislative and institutional measures for the protection of human rights: the Right to Information Act, the National Rural Employment Guarantee Act, the Right to Education Act, the Protection of Women from Domestic Violence Act, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, the National Human Rights Commission, and various constitutional provisions. The reports present a picture of a state with a comprehensive human rights framework, robust institutions, and a functioning democratic system.

The gap between this self-presentation and the reality documented by independent sources is vast. India has accepted a significant number of UPR recommendations across cycles, including recommendations relating to the establishment of independent human rights institutions, the protection of women's rights, the prevention of caste discrimination, and the promotion of

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children's rights. But the implementation of accepted recommendations is deeply uneven: recommendations that require no change in existing policy are routinely accepted and claimed to be implemented, while recommendations that challenge existing security law (such as the repeated recommendations to repeal or significantly amend the UAPA and AFSPA, to ratify the UNCAT, and to allow independent monitoring in Jammu and Kashmir) are either rejected outright or accepted and then ignored.

The July 2024 review by the UN Human Rights Committee following India's compliance with the ICCPR reveals the depth of the disconnect between India's stated commitments and its actual practice. The Committee raised concerns about discrimination and violence against minority communities including religious minorities, Dalits, and tribal groups, about the use of counterterrorism and security laws against human rights defenders and journalists, about the situation in Jammu and Kashmir, about custodial deaths and torture, and about the restrictions on civil society through the FCRA. India's response, delivered by its Attorney General, was to assert that the Constitution comprehended the entire fabric of human rights treaties in its fundamental rights framework and that courts invoked UN human rights instruments in their discourses. This response is, in constitutional terms, accurate: the courts do cite international instruments. But it is constitutionally irrelevant to the Committee's concerns about systematic violations, because the relevant question is not whether courts cite international standards but whether the state apparatus practices them.

The Global Alliance of National Human Rights Institutions (GANHRI), a UN-linked body that accredits national human rights institutions, recommended in 2025 that India's National Human Rights Commission be downgraded due to political interference. This recommendation, which followed concerns about the Commission's lack of independence from the government, its failure to investigate senior officials, and its inadequate engagement with civil society, is of constitutional significance because the Commission was established as part of India's implementation of the Paris Principles on national human rights institutions. A downgraded NHRC would undermine India's claim to have effective domestic mechanisms for human rights protection, removing one of the primary arguments that India deploys to resist international scrutiny.

1.4 The Principle of Non-Refoulement and India's Constitutional Treatment of Asylum Seekers

India is not a signatory to the 1951 Refugee Convention or its 1967 Protocol. This non-ratification means that India has no formal legal obligation under international refugee law to provide protection to persons fleeing persecution. But the principle of non-refoulement, which prohibits the return of persons to territories where they would face serious risk of persecution, torture, or death, is widely regarded as a norm of customary international law binding on all states regardless of treaty ratification.

The constitutional significance of the non-refoulement principle for Indian domestic law has been the subject of some judicial attention. The Supreme Court has, in decisions such as National Human Rights Commission v. State of Arunachal Pradesh (1996) and in several decisions relating to Chakma refugees, held that non-citizens on Indian territory have constitutional rights

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under Articles 14 and 21, including the right not to be expelled in violation of the rule of law. These decisions have been important in providing some measure of judicial protection to refugee and asylum seeker populations.

But the enactment of the Immigration and Foreigners Act, 2025, which was brought to force in September 2025, represents a fundamental constitutional shift in India's approach to asylum seekers and foreigners. The Act, which consolidates and replaces several colonial-era immigration statutes, has been sharply criticized by Amnesty International, which noted that it grants sweeping powers to authorities to restrict movement, censor expression, detain, and deport individuals without adequate safeguards. The Act has been characterized as classifying asylum seekers as illegal migrants, removing even the informal protection that previously existed for persons claiming fear of persecution.

The constitutionality of this Act, measured against the Articles 14 and 21 protections that the Supreme Court has held extend to non-citizens, is highly questionable. But the more fundamental constitutional concern is what this Act reveals about the Indian state's approach to the relationship between constitutional values and international norms: when international norms and constitutional protections are in conflict with the dominant political imperative of controlling immigration in the context of a nationalist political culture, the norms are overridden by legislation that does not survive constitutional scrutiny on its merits but that is enacted with confidence that immediate judicial challenge will be slow and that political cost will be low.

The treatment of Rohingya refugees is the clearest illustration of this pattern. Rohingya Muslims who fled the ethnic cleansing conducted by the Myanmar military have settled in India in significant numbers, primarily in Jammu and Kashmir, Delhi, Hyderabad, and Jaipur. The Indian government has characterized them uniformly as "illegal immigrants" subject to deportation, notwithstanding the documented evidence that they fled genocide and face serious risk of persecution if returned. The Supreme Court, in Rohingya Muslims v. Union of India, refused in 2021 to pass an interim order against deportations, accepting the government's national security arguments. The deportation of Rohingya, including in documented cases of persons who had UNHCR refugee documentation, continues as of 2025.

In parallel, authorities illegally expelled hundreds of Bengali-speaking Muslims and Rohingya refugees to Bangladesh, with some Indian citizens among them, claiming they were illegal immigrants. Human Rights Watch This practice of mass expulsion without individual assessment of claims, which violates the constitutional requirements of due process under Article 21 and the international principle of non-refoulement, represents a direct manifestation of the way in which nationalist constitutional politics overrides both domestic constitutional guarantees and international legal obligations.

CHAPTER TWO: THE UN HUMAN RIGHTS SYSTEM AND THE SYSTEMATIC DOCUMENTATION OF INDIA'S CONSTITUTIONAL FAILURES

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2.1 The UN Human Rights Committee's 2024 Concluding Observations: A Constitutional Document

The concluding observations of the UN Human Rights Committee on India's compliance with the ICCPR, issued in July 2024, constitute one of the most authoritative external assessments of the state of constitutional rights in India available to the international community. They deserve detailed analysis not because they tell us anything that independent Indian scholars and civil society organizations have not been documenting for years, but because they carry the authority of the international human rights system and provide a systematic framework for understanding how India's constitutional failures relate to its international obligations.

The Committee's observations cover a remarkable range of subjects, each of which connects to constitutional provisions, constitutional institutions, and constitutional failures that have been examined in the preceding Parts of this textbook.

On equality and non-discrimination, the Committee expressed concern about the Citizenship Amendment Act 2019, which it found to be incompatible with Article 26 of the ICCPR's guarantee of equal protection regardless of religion. The Committee noted the pending Supreme Court challenge to the CAA and called on India to ensure that citizenship law does not discriminate on religious grounds. The Committee also raised concerns about caste discrimination, which it characterized as a continuing and pervasive violation of the equality guarantee, about violence against Dalits and tribals with inadequate state response, and about the situation of LGBTQ+ persons following the Supreme Court's refusal to judicially recognize same-sex marriage in 2023.

On the right to life, the Committee raised concerns about custodial deaths, about extrajudicial killings particularly in the context of the AFSPA, about the death penalty and its discriminatory application, and about the absence of mandatory reporting or independent investigation of deaths in police custody. The Committee noted that in 2024, the National Human Rights Commission reported 2,739 custodial deaths OMCT, and called for independent investigation and accountability for each case. These deaths represent not merely individual tragedies but a systematic constitutional failure: deaths in state custody are state responsibility under Article 21, and the failure to investigate and prosecute them constitutes a violation of the constitutional right to life.

On freedom of expression, the Committee expressed concern about the use of sedition and related laws (now reproduced in the Bharatiya Nyaya Sanhita) against journalists, activists, and social media users, about the high ranking of India among countries that imprison journalists, about the use of criminal defamation against critics of public officials, and about the restrictions on digital speech under the IT Rules 2021. The Committee called on India to decriminalize defamation and to ensure that restrictions on speech meet the strict necessity and proportionality requirements of Article 19(3) of the ICCPR.

On freedom of assembly and association, the Committee raised concerns about the use of the UAPA to criminalize peaceful political activity, about restrictions on civil society through the FCRA, about the closure of Amnesty International India and other organizations, and about the

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situation of political prisoners held under special security laws. The Committee noted that over 30,000 NGOs have lost operational capabilities due to misuse of the Foreign Contribution (Regulation) Act, 2010 OMCT, and called for the reform of the FCRA to ensure that it is used for its stated purpose of preventing foreign political interference rather than as an instrument of civil society suppression.

On the rights of minorities, the Committee raised concerns about incidents of mob lynching targeting religious minorities, about the failure of state governments to prosecute perpetrators, about the demolition of Muslim-owned properties, about the restrictions on religious conversion, and about the general pattern of communal violence with inadequate state response. The Committee called on India to take effective measures to protect religious minorities and to prosecute both perpetrators of communal violence and officials who fail to prevent it or who incite it.

On the administration of justice, the Committee raised concerns about the backlog of cases in the Indian court system (over 50 million cases pending as of 2024), about the quality and availability of legal aid, about the independence of the judiciary, about the use of pre-trial detention under special laws that effectively reverse the burden of proof, and about the conditions of detention in Indian prisons and detention centers. The Committee noted the systematic failure of the criminal justice system to provide timely justice, which it characterized as a violation of the right to a fair trial under Article 14 of the ICCPR.

The pattern revealed by the Committee's concluding observations, taken as a whole, is not a pattern of incidental failures in an otherwise functional constitutional order. It is a pattern of structural dysfunction across all the core areas of civil and political rights: the right to life, the right to equality, freedom of expression, freedom of association, the right to a fair trial, and the rights of minorities. This structural dysfunction is the international human rights system's assessment of what this textbook has been documenting through constitutional analysis: that India's constitutional order is failing systematically and that incremental remediation is insufficient.

2.2 The Special Procedures and India's Resistance to Independent Monitoring

The UN Human Rights Council's system of Special Procedures, comprising Special Rapporteurs, Independent Experts, and Working Groups, provides the most detailed and specialized international monitoring of specific human rights situations. India has engaged with this system in a manner that is characteristic of its broader approach to international accountability: selective acceptance of visits that can be managed, systematic resistance to monitoring of sensitive situations, and use of diplomatic channels to delay, dilute, or prevent scrutiny that cannot be controlled.

As of 2025, India has a standing invitation to visit for certain Special Procedures thematic mandates, but has consistently declined or delayed requests from several of the most relevant mandates. The Special Rapporteur on Torture has sought to visit India for many years and has been rebuffed. The Special Rapporteur on the Situation of Human Rights Defenders, whose mandate directly addresses the pattern of persecution of civil society activists documented

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throughout this textbook, has similarly been unable to conduct an official country visit. The Special Rapporteur on Freedom of Religion or Belief, whose mandate is directly relevant to the pattern of anti-minority governance documented in Chapter Five of Part Eleven, has not been permitted an official visit.

The Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions has raised concerns about the AFSPA and about the practice of encounter killings (extrajudicial executions characterized as encounters with armed opponents) in Jammu and Kashmir and in various states. The UN Working Group on Arbitrary Detention has found, in individual decisions on communications submitted to it, that several prominent detainees in India, including Bhima Koregaon accused persons such as Sudha Bharadwaj, Arun Ferreira, and Vernon Gonsalves, are being held in arbitrary detention in violation of international standards. India has rejected these findings, characterizing them as interference in domestic judicial processes. But the pattern of Working Group findings on India, which spans more than a decade and covers both pre-BJP and post-BJP governments, suggests a systematic problem rather than politically motivated selectivity.

The Special Rapporteur on the Rights of Indigenous Peoples has raised concerns about the situation of Scheduled Tribe communities affected by the Forest Rights Act's implementation, about displacement from forest and mining areas, and about the denial of traditional rights under the colonial-era Indian Forest Act, which continues in force notwithstanding the Forest Rights Act's nominal recognition of forest-dwellers' rights.

India's response to Special Procedure communications is, in formal terms, engaged: it replies to communications and provides its perspective on the cases raised. But substantive accountability for the situations raised is consistently absent. The pattern is one of reply without remedy: India acknowledges the Special Procedure's concern, provides an official account of the case that typically characterizes the detainee as a security threat or criminal rather than a human rights defender, and declines to take any concrete action in response to the Rapporteur's concerns. This constitutionally significant pattern of systematic non-compliance with UN Special Procedure findings represents one of the clearest examples of what Koskenniemi describes as the use of international law as a performative shield: the performance of engagement with international accountability mechanisms without acceptance of their substantive implications.

2.3 NHRC Downgrading and the Crisis of Domestic Human Rights Institutions

The recommendation by GANHRI in 2025 that India's National Human Rights Commission be downgraded from A-status (full compliance with the Paris Principles) to B-status (partial compliance) is of constitutional significance that goes beyond its immediate practical implications for India's international standing in UN forums where A-status accreditation is required to participate fully.

The Paris Principles, adopted by the UN General Assembly in 1993, establish the standards for the independence and effectiveness of national human rights institutions. They require, among other things, that such institutions be independent of the government, that they have a broad mandate encompassing all human rights, that they have adequate funding and human resources,

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that they engage substantively with civil society, and that they be able to investigate complaints against public officials without political interference.

The NHRC's failure to meet these standards has been documented by Indian civil society organizations for many years. The Commission is chaired by a former Chief Justice of India (which satisfies a formal independence criterion) but is funded by the government and is dependent on the government for its operational infrastructure. Its staff is drawn predominantly from the Indian Police Service and other civil services, creating institutional cultures that are often unsympathetic to complaints against the police and security forces. Its jurisdiction explicitly excludes complaints against the armed forces (a provision that has been characterized as designed to shield the AFSPA regime from domestic human rights accountability). And its engagement with civil society, while formally maintained through public hearings and consultations, has been described by independent organizations as insufficient and largely performative.

The constitutional dimension of the NHRC's inadequacy is direct. The Commission was established under the Protection of Human Rights Act, 1993, which gave legislative form to India's commitment to the Paris Principles. The Act was intended to create a domestic mechanism for the accountability of the state for human rights violations. If that mechanism is compromised by political interference, underfunding, and structural limitations, the constitutional promise of rights enforcement is proportionally reduced. The NHRC has been, in the phrase used by critics, a "toothless watchdog": an institution that creates the appearance of human rights accountability without the substance of it.

The proposed downgrading represents international confirmation of what domestic critics have long argued. Its constitutional implications are significant: if India's primary domestic human rights institution does not meet international standards of independence and effectiveness, the state cannot credibly argue that adequate domestic remedies exist for human rights violations, which is the argument it routinely deploys to resist international scrutiny. The logic of exhaustion of domestic remedies, which underlies international human rights procedures' deference to domestic institutions, is premised on the adequacy of those remedies. An inadequate NHRC weakens this logic and strengthens the case for international accountability.

2.4 The Bhima Koregaon Case as a Constitutional Paradigm

The prosecution of the accused in the Bhima Koregaon case, now spanning more than seven years, has become, for international human rights observers, the definitive illustration of how India's constitutional order is used against the very people it purports to protect. The case deserves extended analysis because it is not merely an individual injustice but a constitutional paradigm: a case that illustrates, with unusual clarity and documentation, the full range of constitutional failures that this textbook has been examining.

On January 1, 2018, violence broke out at Bhima Koregaon near Pune, Maharashtra, where Dalits had gathered to commemorate the 200th anniversary of the Battle of Bhima Koregaon, in which Dalit soldiers serving in the British Army defeated the upper-caste Peshwa forces. The violence was instigated by Hindutva groups but was used by the Pune police, under a BJP-

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governed state government, as a pretext for arresting a group of academics, lawyers, human rights defenders, and activists who had spoken at an Elgar Parishad conference in Pune the day before.

The accused include Sudha Bharadwaj (a lawyer and trade union organizer, a Padma Shri recipient), Varavara Rao (a distinguished Telugu poet in his eighties), Vernon Gonsalves (an academic and human rights activist), Arun Ferreira (a lawyer and activist), Stan Swamy (an eighty-three-year-old Jesuit priest who worked with tribal communities in Jharkhand), Anand Teltumbde (a professor and Ambedkar scholar), and several others. They are accused under the UAPA of being members of or having links with banned Maoist organizations and of conspiring to instigate violence.

Stan Swamy died in custody on July 5, 2021, while his bail application was pending before the Bombay High Court. He was suffering from Parkinson's disease and had requested a sipper cup for drinking water, a request that was initially denied by the prison authorities. His death in custody, at eighty-three years of age, of a man accused of conspiracy on the basis of evidence that forensic experts have characterized as digitally fabricated, is perhaps the most powerful symbol of what constitutional failure looks like in human terms.

The digital forensic aspects of the Bhima Koregaon case are constitutionally significant in ways that go beyond the individual prosecution. An analysis by Arsenal Consulting, an American digital forensics firm commissioned by defense counsel, found that Netware malware was used to plant fabricated documents on the computers of several of the accused, creating false evidence of links with Maoist organizations that was then used to justify their arrest and prosecution. The forensic report identified the attacker as the same entity that had targeted other Indian human rights defenders and journalists using the Pegasus spyware. This evidence raises the disturbing constitutional possibility that the prosecution was built on evidence fabricated by state or state-linked actors, a possibility that Indian courts have been extraordinarily reluctant to investigate.

The constitutional analysis of the Bhima Koregaon case covers multiple dimensions. First, the use of the UAPA: as analyzed in earlier parts of this textbook, Section 43D(5) of the UAPA makes bail virtually impossible if the court finds that the prosecution's case appears prima facie true, which is determined on the basis of the police report without examination of the defense's evidence. The constitutional right to bail, implicit in the right to personal liberty under Article 21, is effectively suspended for UAPA accused, who are imprisoned for years without trial on the basis of police allegations that may be false. Second, the right to a fair trial: the Bhima Koregaon case has proceeded at a pace that is a travesty of the constitutional right to a speedy trial, with the trial taking years to even begin while the accused languish in pre-trial detention. Third, the right to dignity: the treatment of Stan Swamy, denied basic aids for his disability while in prison, represents a violation of the constitutional right to dignity that Article 21 has been held to encompass.

Internationally, the case has drawn responses from the UN Working Group on Arbitrary Detention, which found in individual decisions that Sudha Bharadwaj, Vernon Gonsalves, Arun Ferreira, and others were held in arbitrary detention in violation of ICCPR standards. India has rejected these findings. The UN Special Rapporteur on Human Rights Defenders has raised

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specific concerns about the case. Amnesty International and Human Rights Watch have both characterized the Bhima Koregaon prosecutions as politically motivated persecution of human rights defenders. These international responses have had no discernible effect on the pace or direction of the prosecution. The constitutional machinery of the Indian state continues to grind, slowly and destructively, through the lives of people who were arrested for doing what the Constitution is supposed to protect: speaking truth to power, organizing the marginalized, and documenting violations.

CHAPTER THREE: THE ARMED FORCES SPECIAL POWERS ACT AND INDIA'S CONSTITUTIONAL COLONIALISM IN KASHMIR AND THE NORTHEAST

3.1 AFSPA as Constitutional Colonialism: A Jurisprudential Analysis

The Armed Forces (Special Powers) Act, 1958 (AFSPA) is, in the genealogy of Indian constitutional law, a direct descendant of the Armed Forces (Special Powers) Ordinance of 1942, which was enacted by the British colonial government during the Quit India Movement to give the military sweeping powers to suppress Indian nationalist resistance. The colonial ordinance of 1942 gave British military officers the power to search and arrest without warrant, to shoot and kill any person acting in contravention of any law in the disturbed area, and to destroy property. Independent India inherited this ordinance, modified it slightly, and enacted the AFSPA in 1958 to apply first to the northeastern states and later, in 1990, to Jammu and Kashmir.

The constitutional genealogy is more than historically interesting. It reveals the structural continuity between colonial control of subject populations and post-independence management of populations that are characterized as security threats. The people of Nagaland, Manipur, Mizoram, and Jammu and Kashmir were treated by the British colonial state as populations requiring special military management. They are treated by the independent Indian state through the same instrument, with superficial modifications. The legal historian R. Venkataramani has argued, in a different context, that the Indian Constitution incorporated the entire fabric of human rights treaties. The AFSPA's continued operation suggests that this incorporation has been highly selective: the human rights fabric is incorporated when it is convenient and set aside when security imperatives (as defined by the state) require.

The specific provisions of the AFSPA that generate the most serious constitutional concerns are Section 4, which empowers any commissioned officer, warrant officer, non-commissioned officer, or other person of equivalent rank in the armed forces to use force, including lethal force, against any person who is doing any act which is likely to disturb the public order, if he is of opinion that it is necessary to do so for the maintenance of public order, and Section 6, which provides that no prosecution, suit, or other legal proceeding shall be instituted against any person in respect of anything done or purported to be done in exercise of the powers conferred by the Act except with the prior sanction of the Central Government.

Section 6, the so-called sanction requirement, is constitutionally the most significant provision. It creates, in effect, a system of executive immunity for military personnel accused of serious

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human rights abuses, including unlawful killings, torture, enforced disappearances, and sexual violence. Under this provision, a victim of an extrajudicial killing cannot obtain justice through the criminal courts without the prior sanction of the Central Government for the prosecution of the accused military personnel. The Central Government has, in practice, never granted such sanction in any documented case of human rights abuse under the AFSPA. The Supreme Court in Extra Judicial Execution Victim Families Association v. Union of India (2016) held that the sanction requirement does not apply to cases where armed forces personnel have committed murder, rape, or other serious offences, and that fake encounter killings must be investigated by civilian authorities. But the implementation of this direction has been minimal, and the de facto impunity created by the sanction requirement continues.

The international human rights system has consistently called for the repeal of the AFSPA. The UN Human Rights Committee, in its 2024 concluding observations, reiterated this call. The UN Special Rapporteur on Extrajudicial Executions has characterized the AFSPA as incompatible with international standards on the use of force. The UN Committee Against Torture, in its review of India (which occurred despite India's non-ratification of the UNCAT through the process of treaty-body review of voluntary reports), has called for the repeal of the Act.

India's response has been consistent: the AFSPA is a temporary and exceptional measure necessary for the maintenance of national security in disturbed areas, its application is regularly reviewed, and its scope has been progressively reduced as security situations improve. The progressive reduction claim has some substance: the AFSPA was removed from Mizoram in 1986 (with the peace settlement) and from Tripura in 2015. But its continued application in Manipur and Jammu and Kashmir, notwithstanding decades of military presence and notwithstanding the constitutional abrogation of Article 370 (which was justified partly on the ground that it would lead to the normalization of the Jammu and Kashmir situation), represents a constitutional failure to deliver on the promise of rights protection for populations that have been subjected to military governance for generations.

3.2 Jammu and Kashmir: The Constitutional Laboratory of Illiberal Constitutionalism

The constitutional situation of Jammu and Kashmir in the period 2019-2026 deserves a dedicated analysis because it represents, in concentrated form, virtually every dimension of the constitutional failure that this textbook has been examining: the misuse of emergency powers, the centralization of authority over state units, the suspension of democratic rights, the use of security law against political opposition, the failure to protect minority rights, and the resistance to international accountability.

The abrogation of Article 370 and the reorganization of Jammu and Kashmir into two Union Territories (Ladakh, without a legislature, and Jammu and Kashmir, with a legislature) through the Jammu and Kashmir Reorganization Act, 2019 was accomplished by a series of constitutional maneuvers whose legality is deeply contested and whose constitutional propriety is, this analysis argues, seriously questionable even if their formal constitutionality is ultimately upheld.

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Article 370, as it stood until 2019, had a unique constitutional status: it was the constitutional instrument through which Jammu and Kashmir's accession to India was operationalized, and it gave the J and K Constituent Assembly (which had dissolved in 1957 after framing the state's constitution) the power to decide which provisions of the Indian Constitution would apply to the state. After the Constituent Assembly's dissolution, Article 370's provisions continued to operate through a combination of presidential orders and the state's own constitutional arrangements. The abrogation of Article 370 through a presidential order issued under the Emergency provision of Article 356 (President's Rule), at a time when the state legislature was suspended, without the participation of any genuine elected representative of J and K's people, raises profound questions of constitutional legitimacy.

The Supreme Court, in a landmark decision of December 2023 in Association for Democratic Reforms v. Union of India (the Article 370 case), upheld the abrogation by a unanimous five-judge bench. The Court held that the President had the power to issue the relevant orders, that the Constituent Assembly's recommendation requirement had lapsed with the dissolution of that Assembly, and that the creation of Union Territories (rather than mere reorganization of the state) was within Parliament's constituent power. The Court did, however, hold that statehood must be restored to J and K "as soon as possible" and that elections to the J and K assembly must be held by September 2024.

Elections were held in September-October 2024 and a National Conference-led government was formed. But the statehood restoration commitment remains unfulfilled as of early 2026, with the government citing security situations as justification for delay. The constitutional anomaly of Jammu and Kashmir as a Union Territory with an elected legislature, a category that creates a fundamental tension between democratic self-governance (implied by an elected legislature) and central control (implied by Union Territory status), continues to define the constitutional situation of a region whose people have experienced extraordinary disruption of their political, economic, and social lives.

The human rights situation in J and K in the period since the 2019 abrogation has been extensively documented by international organizations. Hundreds of Kashmiris, including journalists and human rights activists, remained in custody. Human Rights Watch The communications shutdown imposed in August 2019, which was the longest shutdown in any democracy in history, lasted for months for mobile internet and over a year for high-speed internet in some areas, and was characterized by the Supreme Court in Anuradha Bhasin v. Union of India (2020) as requiring justification on proportionality grounds, though the Court's remedial orders were less than the situation required. The pattern of detention of political leaders, journalists, and civil society activists under the PSA and UAPA, the restrictions on movement and assembly, and the continuation of the AFSPA regime constitute, in the assessment of the UN High Commissioner for Human Rights, a situation that seriously undermines the rule of law and the enjoyment of human rights.

The constitutional comparison with the British government's management of Northern Ireland during the Troubles is instructive and uncomfortable. The British government's use of internment without trial, of special courts, and of emergency security legislation during the Northern Ireland conflict was extensively criticized by the European Court of Human Rights (in Ireland v. United

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Kingdom, 1978) and contributed to prolonged political instability and human suffering. The eventual resolution of the Northern Ireland conflict through the Good Friday Agreement required political negotiation that addressed the underlying political grievances of the affected community. The constitutional lessons of Northern Ireland for the management of the Jammu and Kashmir situation have never been seriously drawn in Indian constitutional debate, which is itself revealing of the constitutional culture that governs policymaking on this issue.

3.3 Manipur: Constitutional Failure in Slow Motion

The ethnic violence in Manipur, which began in May 2023 and had resulted in over 200 deaths and the displacement of more than 60,000 persons as of late 2024, constitutes one of the most severe peacetime constitutional failures of the Indian state. Indian authorities failed to end the ethnic violence in the northeast state of Manipur, which has killed over 200 people and displaced more than 60,000 since May 2023. Human Rights Watch It is a failure not merely of security policy but of constitutional governance at every level: the failure of the state government to protect citizens, the failure of the central government to intervene effectively under its constitutional powers, the failure of the legal system to provide accountability for perpetrators, and the failure of democratic politics to create pressure for remediation.

The violence pits the predominantly Christian Kuki-Zo community against the predominantly Hindu Meitei community, with the BJP-governed state government accused of systematic bias in favor of the Meitei community and against the Kuki-Zo. The constitutional significance of these accusations is profound: if a state government is using the security apparatus to take sides in ethnic violence rather than to protect all citizens equally, it is violating the most fundamental constitutional obligation of the state, the obligation under Article 14 to provide equal protection of the law, and under Article 21 to protect the right to life of every person within its territory.

The AFSPA, which is in force in parts of Manipur, creates the additional constitutional problem of military presence in a context of ethnic violence where the military may be perceived as partisan. The constitutional framework for federal intervention in a state where the government is failing to protect its citizens includes the possibility of President's Rule under Article 356, but President's Rule has not been imposed in Manipur despite the prolonged and severe violence, apparently because the BJP-governed state is politically aligned with the central government. The constitutional mechanism of federal intervention for the protection of citizens' rights is thus rendered unavailable by the political reality of co-partisanship, an illustration of how the constitutional architecture of executive power is vulnerable to partisan capture that converts constitutional safeguards into partisan shields.

CHAPTER FOUR: THE CONSTITUTIONAL ROOTS OF INDIA'S FOREIGN POLICY FAILURE

4.1 The Constitution, Nationalism, and Foreign Policy: A Structural Connection

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The relationship between constitutional design and foreign policy is not immediately obvious, and constitutional law textbooks rarely address it. But the argument of this chapter is that the constitutional architecture of the Indian state, particularly its centralizing character, its susceptibility to nationalist capture, and its tendency toward the conflation of state identity with majoritarian cultural identity, has profound and largely negative consequences for India's foreign policy and its standing in the international community.

This argument connects to a broader tradition in international relations theory and political science that links the internal character of states to their external behavior. Democratic peace theory, originating in Immanuel Kant's "Perpetual Peace" and elaborated in twentieth-century international relations scholarship, holds that liberal democratic states are significantly less likely to go to war with each other than with non-democratic states, and less likely to engage in aggressive international behavior generally, because democratic accountability, press freedom, and institutional constraints on executive power moderate the aggressive impulses of political leaders. Conversely, states with weak democratic institutions, strong executive power, and nationalist political cultures are more likely to pursue aggressive foreign policies, to resort to military means of conflict resolution, and to treat foreign policy as an extension of domestic identity politics rather than a pragmatic pursuit of national interest.

The Indian Constitution was designed, in its aspirational dimensions, to support the kind of democratic constitutionalism that democratic peace theory associates with peaceful international behavior. Nehru's foreign policy of non-alignment, of Panchsheel (the five principles of peaceful coexistence), and of Third World solidarity reflected a constitutional vision of India as a state whose democratic character and postcolonial identity would make it a bridge-builder and a moral voice in international affairs rather than a conventional great power pursuing hegemonic ambitions.

That vision has been progressively undermined, and the constitutional factors that have contributed to its undermining include: the concentration of foreign policy in the executive without adequate parliamentary oversight, the susceptibility of the constitutional order to majoritarian capture that has converted India's secular civic nationalism into an assertive Hindu nationalist identity politics, the centralization of power that has made foreign policy a tool of the ruling political coalition's domestic agenda rather than a genuine expression of national interest, and the colonial inheritance of a security apparatus and security law framework that treats neighbors as potential threats rather than as partners in regional development.

The result, visible with great clarity in the period 2015-2026, is what can be described as the constitutional nationalization of Indian foreign policy: the progressive subordination of the pragmatic management of India's international interests to the demands of Hindu nationalist identity politics. This subordination has been catastrophic for India's relations with its neighbors and has significantly damaged its international standing.

4.2 The Akhand Bharat Syndrome: How Constitutional Nationalism Alienates Neighbors

In 2023, at the inauguration of a new parliament building overseen by Modi, a map was displayed that depicted countries such as Pakistan, Bangladesh, Nepal, and Myanmar as part of

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India, under the concept of "Akhand Bharat," sparking diplomatic outrage. Despite efforts at explanation by External Affairs Minister Jaishankar, the use of such civilizational imagery is part of a broader narrative under the current BJP government that projects India as a civilizational ideological state, not a secular democracy. Such framing, despite resonating domestically, is interpreted by India's neighbors as normative geopolitical ambitions, especially when there are territorial and cultural sensitivities. The Diplomat

The Akhand Bharat map displayed in the new Parliament building is not merely a diplomatic embarrassment. It is a constitutional symptom. It reveals the degree to which the Hindu nationalist vision of India, which the constitution was explicitly designed to resist through its secular, pluralist, and civic model of national identity, has captured the institutions of the state, including the physical space of the new Parliament building that replaced the colonial-era Parliament House. When the building that houses the legislative branch of the Indian state displays a map that claims as historically Indian territory that includes Pakistan, Bangladesh, Nepal, Myanmar, and other sovereign states, it is not making a geographic claim: it is making a constitutional one. It is asserting that the constitutional identity of India is civilizational rather than civic, that the Indian state's legitimate territory is defined by the Hindu civilizational imagination rather than by internationally recognized borders, and that neighboring states are not genuinely sovereign but are temporary aberrations from a natural order that should properly see them incorporated into an expanded Indian union.

This is, from the perspective of both constitutional theory and international law, a fundamentally lawless position. The boundaries of the Indian state are established by international law, by treaties, and by the constitutional framework that recognizes those boundaries. The Akhand Bharat ideology is incompatible with the constitutional model of India as a state defined by the will of its citizens within recognized territory, and it is incompatible with the international law principle of respect for territorial integrity and sovereign equality. It is also, as the diplomatic record of 2023-2026 makes clear, profoundly damaging to India's relationships with every neighbor whose territory it implicitly claims.

The constitutional roots of the Akhand Bharat phenomenon lie in the silence of the Indian Constitution on the relationship between Hindu nationalism and the state. The Constitution is explicitly secular, but its secularism is the secularism of equal distance from all religions rather than the strict separation of the state from religious identity. This model of secularism has always been vulnerable to the argument that a secular state can also celebrate the Hindu civilizational heritage that is the cultural foundation of the majority community. The RSS and the broader Hindutva movement have exploited this vulnerability to progressively narrow the gap between state identity and Hindu cultural identity in ways that are now visible in foreign policy as much as in domestic governance.

The constitutional reform required to address this problem is not merely a matter of adding provisions about secularism. It is a matter of creating enforceable constitutional standards for the relationship between state conduct and religious and cultural identity, standards that prohibit the state from using public resources, public spaces, and state occasions to promote the cultural agenda of any particular religious or ethnic community. Such standards would need to be justiciable, apply to the executive as well as to the legislature, and be enforced by an independent

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judiciary with the institutional capacity and the constitutional mandate to do so. None of these conditions currently exists.

4.3 Bangladesh: The Constitutional Cost of a Nationalist Foreign Policy

After the ouster of long-time ruler Sheikh Hasina in August 2024, the new government of Nobel Laureate Muhammad Yunus is pursuing a broader diplomatic recalibration: increased engagement with Pakistan and China. This reversed decades-old Bangladeshi policy of reliance on India, signaling a shift in strategic priorities. The Diplomat

The collapse of India's relationship with Bangladesh, which was the most significant bilateral relationship in India's immediate neighborhood and the one that had historically been most favorable to Indian interests, is a constitutional story as much as a foreign policy story.

The Indian government's long-standing support for the Awami League government of Sheikh Hasina, even as that government became increasingly authoritarian, suppressed political opposition, and conducted extrajudicial killings that were documented by international human rights organizations including in a UN report, reflected a constitutional failure of Indian foreign policy: the prioritization of short-term geopolitical convenience (a Bangladesh government that cooperated with India's security interests) over the constitutional values (democracy, human rights, rule of law) that the Indian Constitution is supposed to embody. In Bangladesh, the 2024 ouster of Sheikh Hasina amid student-led protests chanting "India Out" exposed deep resentment toward New Delhi's perceived interference, including support for Hasina's regime and controversial deals like the Adani Group's energy projects. APN News

The constitutional analysis of the India-Bangladesh relationship in this period requires attention to the way in which the constitutional order's susceptibility to oligarchic capture, particularly the concentration of economic and political power in the hands of a few corporate groups with close ties to the ruling party, extended into foreign policy. The Adani Group's energy projects in Bangladesh, which were controversial in Bangladesh for their pricing terms and which were associated in the public perception with the privileged access that the Adani Group enjoyed to the Indian government, became a focal point for Bangladeshi popular resentment of Indian "dadagiri" (bullying). This is not merely a foreign policy failure: it is a constitutional failure, the failure of the constitutional order to prevent the use of state power for the promotion of oligarchic private interests at the expense of genuine national interests, including the national interest in maintaining good relations with neighbors.

By 2025, Bangladesh aligned more closely with China, which became its largest trading partner and arms supplier, investing in ports like Chittagong and Mongla as part of its "String of Pearls" strategy to contain India. Anti-India sentiment surged further in early 2026 following the death of student activist Sharif Osman Hadi, with mobs accusing India of complicity and threatening Indian missions. APN News

The strategic consequence of this collapse is severe. The Siliguri corridor, the narrow strip of land connecting the northeastern states of India to the main body of the country, passes between Bangladesh to the south and Nepal and Bhutan to the north. If Bangladesh becomes genuinely

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hostile to India, the security of the northeastern states, which are already connected to the rest of India by a geographical bottleneck, becomes significantly more precarious. This is not a constitutional consequence in the narrow sense but it is the consequence of constitutional failure in the broader sense: the failure of the constitutional order to prevent the domestic political dynamics that have alienated a crucial neighbor and created a strategic vulnerability.

4.4 Nepal: Constitutional Interference and the Limits of Paternalism

India's relationship with Nepal, a fellow Hindu state and historically close ally, has soured under Modi's tenure despite the lofty rhetoric of "Neighbourhood First" policy. The 2015 blockade during Nepal's constitution promulgation left a bitter legacy, with Kathmandu accusing New Delhi of an unofficial embargo aimed at political coercion. Border disputes over areas like Kalapani and Lipulekh have further strained ties, with both countries issuing competing maps and nationalist rhetoric. Substack

The constitutional dimensions of the India-Nepal relationship involve two distinct but related forms of constitutional illegitimacy. The first is the Indian government's attempt, in 2015, to influence the content of Nepal's constitution through the implicit threat of an economic blockade. Nepal, exercising its sovereign constituent power, was in the process of adopting a new constitution after years of political transition following the end of the Maoist insurgency and the abolition of the monarchy. India objected to provisions in the draft constitution relating to the political rights of the Madhesi community (ethnic groups with cultural and linguistic ties to Indian border communities). The Indian government's attempt to pressure Nepal to amend its constitution, backed by the quasi-blockade of goods at the border that caused severe fuel and medicine shortages, was an act of constitutional interference in a sovereign state's exercise of its own constituent power.

This interference was not only internationally unlawful (it violated Nepal's right to political independence) but was also constitutionally revealing: it demonstrated that the Indian state was willing to use economic coercion against a sovereign neighbor to advance interests that were partly geopolitical (maintaining influence over Nepal) and partly domestic political (responding to Madhesi community groups with ties to Indian border states whose political support the ruling coalition valued). The subordination of international legal obligations and neighborly relations to the demands of domestic coalition politics is the constitutional foreign policy failure at its most naked.

The second form of constitutional illegitimacy is the issuance of India's new political map in 2019, which included the territories of Kalapani, Limpiyadhura, and Lipulekh as part of Uttarakhand state in India, despite Nepal's claims to these territories. That move provoked diplomatic escalation and led the Nepalese parliament to publish its own revised map, an assertive gesture of sovereignty. Atlantic Council The Indian government's unilateral assertion of territorial claims through cartographic means, in a context where the disputed territories are claimed by both states, is incompatible with the principle of peaceful settlement of disputes that Article 51 of the Indian Constitution directs the state to promote. It is also incompatible with the fundamental norm of international law that territorial disputes must be resolved by negotiation and agreement rather than unilateral assertion.

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Many in Nepal view India's approach as paternalistic and intrusive, pushing Kathmandu closer to China, which offers investment without political conditions. This shift undermines India's influence in a country that was once considered a natural partner. Substack

The structural constitutional problem underlying India's paternalistic approach to Nepal is the "big brother" syndrome that is embedded in the institutional culture of the Indian foreign policy establishment: the inherited understanding, rooted in Nehru's instructions to create a sphere of influence in the Himalayan kingdoms, that India's neighbors are not genuinely equal sovereigns but junior partners who must defer to Indian interests. This understanding is incompatible with the constitutional values of equality and self-determination, and its persistence in Indian foreign policy culture is a manifestation of the colonial administrative mentality that was analyzed in Part One of this textbook as a core feature of the constitutional DNA.

4.5 Pakistan, Kashmir, and the Constitutional Nationalization of Conflict

The India-Pakistan relationship is the most deeply entrenched geopolitical conflict in South Asia and the one most thoroughly saturated with constitutional symbolism and constitutional failure. The constitutional dimensions of the Kashmir dispute, the role of the BJP government's domestic constitutional agenda in shaping India's Pakistan policy, and the consequences of the May 2025 military conflict between the two states all require analysis.

The abrogation of Article 370 in 2019 was, at the international level, presented as an internal constitutional reorganization of the relationship between the Indian Union and a constituent unit. But its international dimensions were profound and immediately apparent. Pakistan characterized the abrogation as a violation of UN Security Council resolutions on Kashmir (which call for a plebiscite), as a change in the status of a disputed territory without the consent of its people, and as a humanitarian catastrophe given the communications shutdown and the detention of political leaders that accompanied it. China characterized it as a unilateral action affecting a disputed territory and raised concerns about the reorganization of Ladakh as a Union Territory given China's own claims to parts of Ladakh.

The use of a domestic constitutional mechanism (the presidential order under Article 370 read with Article 356) to effect a change in the international status of a disputed territory is constitutionally audacious and internationally controversial. It represents the use of constitutional tools of internal reorganization to achieve outcomes that would require international negotiation and agreement if the full international legal framework governing the Kashmir dispute were acknowledged. The Indian government's position is that the Kashmir issue is bilateral and has been settled by the Simla Agreement of 1972, and that there is no role for UN Security Council resolutions. The international community's position is more divided, with most Western governments expressing concern about human rights while not directly challenging India's constitutional authority over J and K.

Not since the Bangladesh crisis and war of 1971 has the Indian foreign policy establishment faced such a cumulation of challenges as it does now. The Chinese threat to India's national security continues unabated. In order not to aggravate tensions with its militarily and

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economically stronger neighbor, the Indian rhetoric of threat perception has focused primarily on its smaller and weaker neighbor, Pakistan. The National Interest

The Operation Sindoor conflict of May 2025, in which India conducted strikes in Pakistan and Pakistani-controlled territory following the Pahalgam terrorist attack that killed 26 people (mostly Hindu tourists), led to a four-day armed conflict between the two countries. Human Rights Watch The constitutional dimensions of this conflict are significant. The conduct of military operations against another sovereign state without formal parliamentary authorization raises questions about the constitutional allocation of war powers: under the Indian Constitution, the President is the Supreme Commander of the Armed Forces, and the executive conducts external affairs under Article 53 and 73. There is no explicit constitutional requirement of parliamentary authorization for military action, unlike in systems such as the United States where Congress has the power to declare war. The concentration of war power in the executive, without parliamentary oversight or constitutional requirements of accountability, is a constitutional gap that the conflict exposed with particular clarity.

The failure of the conflict to achieve India's stated objectives, including the international isolation of Pakistan, was in part a consequence of the very foreign policy failures that nationalist constitutional politics had generated: the United States and China were seen supporting Pakistan through aid and diplomacy, exposing Modi's inability to isolate Islamabad. GKToday The credibility gap that India had accumulated through its democratic backsliding, its treatment of minorities, its press freedom failures, and its rejection of international accountability mechanisms reduced its moral standing in the international community at precisely the moment when it needed moral authority to build a coalition against Pakistan's alleged support for terrorism.

4.6 The China Factor: Constitutional Weakness and Strategic Vulnerability

China's growing dominance in South Asia is the most significant long-term strategic consequence of India's constitutional foreign policy failures. China is now overtaking India as the top trading partner for Pakistan, Bangladesh, Nepal, and Sri Lanka, leveraging its Belt and Road Initiative to build ports, roads, and infrastructure that encircle India. China continues to aggressively expand its influence in South Asia. With no ideological baggage and deep pockets, Beijing is now the preferred alternative for many of India's traditional allies. APN News

The constitutional connection between India's domestic failures and China's regional gains operates through several mechanisms. First, India's democratic backsliding has reduced its attractiveness as a model of governance for neighboring states: it is harder for India to argue for democracy, rule of law, and constitutional governance as alternatives to China's authoritarian development model when India's own constitutional record shows dramatic deterioration across multiple dimensions. Second, India's treatment of religious minorities, particularly Muslims, has alienated Muslim-majority neighbors (Bangladesh, Pakistan) and has given China an ideological opening to present itself as a more religiously tolerant alternative partner. Third, the concentration of decision-making in the Indian executive, the opacity of policy processes, and the corruption that the constitutional order's accountability deficits enable, make India a less reliable and less attractive partner than it would be if its constitutional governance were stronger.

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The Chinese constitutional model, for all its many profound failures of human rights and democratic governance, offers a kind of consistency and predictability in infrastructure investment and economic partnership that the volatile, domestically determined, and constitutionally compromised Indian foreign policy has been unable to match. This is not to endorse the Chinese model: it is to note that the failure of the Indian constitutional order to deliver good governance at home has direct consequences for India's capacity to compete for influence abroad.

CHAPTER FIVE: THE BRITISH CONSTITUTIONAL INHERITANCE AND INDIA'S INTERNATIONAL LEGAL POSTURE

5.1 How the Colonial Constitutional Framework Shapes India's International Legal Behavior

The colonial genealogy of the Indian constitutional order, analyzed in depth in Part One of this textbook, extends into the international arena in ways that are not always recognized. The British colonial government used international law selectively and strategically, as an instrument of empire: accepting international legal norms that served imperial interests, resisting those that challenged colonial domination, and developing a sophisticated rhetoric of international legal engagement that served legitimacy without accepting accountability.

Independent India inherited this strategic approach to international law along with the colonial administrative framework. The pattern of selective treaty ratification analyzed in Chapter One of this Part, the use of sovereignty arguments to resist international scrutiny, the deployment of "domestic affairs" reasoning to deflect international human rights concerns, and the strategic engagement with international institutions to secure legitimacy while resisting accountability, are all features of a colonial international legal posture that has been carried forward into the post-independence era.

The British colonial government was a pioneer in the use of legal formalism to clothe substantive injustice in the language of law. The elaborate legal framework of colonial India, with its codes, statutes, courts, and procedural requirements, served the dual function of providing the appearance of the rule of law while enabling the systematic denial of justice to the colonized population. This colonial legacy of legal formalism without substantive justice is visible in India's international legal practice: India participates formally in international human rights procedures, submits reports, sends delegations, accepts recommendations, and constructs sophisticated legal arguments for the compatibility of its practices with international standards. But the substance of accountability, the change in practice that accountability would require, is systematically resisted.

The specific constitutional provisions that most directly reflect this colonial inheritance in the international arena are the emergency powers of Part XVIII. The emergency provisions were designed, in their colonial antecedents, to give the colonial government the power to suspend constitutional protections for the colonized population when imperial interests required. In the

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post-independence constitutional order, they serve the analogous function of allowing the Indian state to suspend constitutional protections for its own citizens when the state determines that security or order requires it. The international legal consequence is that India can suspend or limit the exercise of fundamental rights that correspond to internationally guaranteed civil and political rights, invoking derogation arguments borrowed from the colonial framework, and can resist international accountability on the ground that emergency conditions justify the measures taken.

The colonial administrative apparatus's approach to information management, which involved careful control of information about colonial abuses and the systematic presentation of colonial governance as benevolent and in the interests of the governed, is also visible in India's international legal practice. India's engagement with international human rights bodies is characterized by the presentation of an official narrative of constitutional compliance, welfare state delivery, and democratic achievement that is sophisticated, well-prepared, and systematically selective in the evidence it presents. The gap between this official narrative and the reality documented by independent sources is the gap between the colonial administrator's report to London and the reality of colonial rule that it described.

5.2 The Parliament Acts of Britain and Their Continuing Shadow

A specific dimension of the British colonial influence on India's constitutional framework that is rarely discussed in this connection is the continuing use of Westminster parliamentary convention in Indian constitutional practice, and the way in which those conventions have been adapted to serve executive dominance rather than parliamentary accountability.

The Westminster system, as it operates in the United Kingdom, embodies a set of constitutional conventions about the relationship between the executive and Parliament that have evolved over centuries: the convention of collective cabinet responsibility, the convention of individual ministerial responsibility, the convention of question time as a mechanism for parliamentary accountability, and the conventions governing parliamentary debate and scrutiny. These conventions, in the United Kingdom, are supported by a parliamentary culture of genuine accountability and by the institutional capacity of Parliament to scrutinize and constrain the executive.

In India, the Westminster conventions were transplanted without the parliamentary culture that gives them life. The result is a system that maintains the forms of parliamentary accountability (question time, budget debates, committee systems, no-confidence motions) while systematically undermining their substance. Question time is managed by the government's control of the legislative agenda. Parliamentary scrutiny of bills is evaded through the use of voice votes, the passage of bills in abbreviated sessions, and the use of ordinances to bypass parliamentary consideration altogether. Committee scrutiny is limited by the composition and resources of parliamentary committees. The anti-defection law makes individual legislators accountable to party leadership rather than to parliamentary principles or constituency interests.

The British colonial government designed its legislative institutions in India not to create genuine parliamentary accountability but to manage the appearance of representative governance

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while preserving executive control. The Parliament of independent India has, in significant measure, continued this colonial tradition, not through colonial purpose but through constitutional inertia, institutional culture, and the convenience of a system that serves executive interests.

5.3 The Indian Evidence Act and Colonial Evidentiary Epistemology

The Indian Evidence Act of 1872, a colonial-era statute that continues to govern the law of evidence in Indian courts, is one of the clearest examples of the constitutional colonialism that this textbook has been documenting. The Evidence Act was drafted by James Fitzjames Stephen, one of the intellectual architects of British India's legal system, and reflects a colonial epistemology of evidence: a framework of evidentiary rules designed to manage the production of truth in colonial courts where the judges were British, the accused were often Indian, and the purposes of the legal system were colonial governance rather than justice.

The colonial evidentiary framework has several features that systematically disadvantage accused persons, particularly those from marginalized communities, in the contemporary Indian legal system. The rule that confessions made to police officers are inadmissible is accompanied by the rule that confessions made to magistrates are admissible, which creates incentives for police to take accused persons before magistrates while they are still in a vulnerable condition from police custody. The presumptions of guilt in certain categories of offenses, including under narcotic drug laws and security legislation, shift the burden of proof from the prosecution to the accused. The rules on the admissibility of prior convictions and character evidence disadvantage accused persons from communities that have historically been overcriminalized by the colonial and post-colonial state.

The Bharatiya Sakshya Adhiniyam, 2023, which replaced the Indian Evidence Act as part of the criminal law reform package enacted in that year, was presented as a decolonization of Indian evidence law. But legal scholars have noted that the substantive provisions of the new Act are substantially similar to those of the 1872 Act, with limited modifications. The decolonization was largely nominal: the statute was renamed, its numbering was changed, and some provisions were reorganized, but the colonial evidentiary framework was largely preserved. This is the pattern that has characterized every exercise in "decolonization" of Indian law under the current government: the renaming of colonial institutions without the transformation of their character.

The constitutional significance of the evidentiary framework for international human rights compliance is direct. The UN Human Rights Committee, the UN Committee Against Torture, and other treaty bodies have specifically raised concerns about the Indian evidentiary framework as it applies to confessions, presumptions of guilt, and the use of evidence obtained through coercive means. The failure to genuinely reform the evidentiary framework, despite the opportunity presented by the criminal law codification exercise of 2023, represents a missed opportunity for constitutional transformation of the relationship between the citizen and the criminal justice system.

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CHAPTER SIX: COMPARATIVE CONSTITUTIONAL LAW AND INDIA'S DEMOCRATIC REGRESSION

6.1 Democratic Backsliding and the Theory of Constitutional Retrogression

The comparative constitutional literature of the past decade has been dominated by the problem of democratic backsliding, also called democratic recession, democratic regression, or what Aziz Huq and Tom Ginsburg (in their 2018 paper "How to Lose a Constitutional Democracy") call "constitutional retrogression": the gradual degradation of constitutional democracy by incumbents who use legitimate constitutional means to undermine the conditions of democratic competition. Unlike the classic coup d'etat or revolution, constitutional retrogression does not involve the formal overthrow of constitutional institutions. It operates, instead, by capturing, corrupting, or enfeebling those institutions while maintaining their formal existence.

The Indian case is now a central reference point in the global literature on constitutional retrogression. Scholars including Milan Vaishnav, Rahul Sagar, Christophe Jaffrelot, and Milan Svolik have analyzed India's democratic regression in comparative perspective, situating it alongside comparable cases of constitutional retrogression in Hungary, Turkey, Poland, Brazil, and other contexts. The comparative analysis reveals that India's regression has several distinctive features that are connected to its specific constitutional design.

The first distinctive feature is the pace and method of regression. Unlike Hungary's Viktor Orban, who moved rapidly to consolidate power through constitutional amendments in the first years of his parliamentary supermajority, India's regression has been gradual, operating through the accumulation of smaller moves that individually appear within constitutional bounds but that together constitute a structural shift in the balance of power. The anti-defection law is not new; the UAPA is not new; the Governors' office is not new; the ordinance power is not new. But the systematic and unapologetic use of all of these instruments simultaneously, in service of a coherent project of political dominance, represents a constitutional transformation that cannot be captured by examining any single provision.

The second distinctive feature is the role of judicial deference. In Hungary and Poland, the constitutional courts were among the first institutions to resist the incumbent's consolidation of power, prompting the incumbent to take direct measures to neutralize them. In India, the Supreme Court has been more deferent to the executive on matters of political sensitivity, more willing to delay adjudication of constitutional challenges to controversial government actions, and more reluctant to grant interim relief in cases involving government policy. This judicial deference has meant that the constitutional court has been less of an obstacle to regression and more of a post-hoc justifier of measures that have already been implemented. The 2023 Article 370 decision, the 2022 FCRA decision, and the 2018 Aadhaar decision are all examples of the Supreme Court's approval, with qualifications, of measures that critics had argued were constitutionally illegitimate.

The third distinctive feature is the role of electoral legitimacy. Modi's BJP has won three consecutive Lok Sabha elections, two with outright majorities and one with a coalition majority. This electoral success provides a democratic legitimacy argument for the government's

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constitutional practices that is not available to incumbents who have consolidated power through constitutional manipulation of election results. The legitimacy argument is, as comparative scholars have noted, both genuine and problematic: genuine because electoral success in competitive elections does provide democratic legitimacy, problematic because the conditions of electoral competition have themselves been compromised by the institutional changes that the government has made. An incumbent who has weakened the independence of the Election Commission, who has used the investigative apparatus against political opponents, who controls a disproportionate share of media, and who has used constitutional and legal tools to constrain civil society has altered the conditions of democratic competition in ways that raise questions about the genuine competitiveness of elections even when they are held.

6.2 The Hungarian Comparison: Lessons in Constitutional Capture

The comparison with Hungary under Viktor Orban is frequently made in the analysis of India's constitutional regression, and it deserves careful treatment. Hungary's constitutional transformation from 2010 onward, which included the adoption of a new constitution (the Fundamental Law) in 2011, the transformation of the constitutional court, the capture of the judiciary, the subordination of independent media, the transformation of the electoral system to advantage the incumbent, and the progressive marginalization of political opposition, has been extensively analyzed in the comparative constitutional literature and provides a warning model for where India's trajectory could lead.

The similarities between Hungary and India include the role of nationalism as the ideological foundation of the governing coalition, the use of constitutional and legal tools rather than outright coercion to consolidate power, the targeting of civil society through foreign funding restrictions (Hungary's "Lex NGO" and India's FCRA amendments pursue similar aims), the use of a loyal media ecosystem to shape the information environment, and the exploitation of genuine security concerns (immigration in Hungary, terrorism in India) to justify exceptional measures.

But the differences are equally important. Hungary adopted a new constitution, making its constitutional transformation formal and explicit. India has operated through amendments and interpretations of an existing constitution, making its transformation less visible and more legally defensible. Hungary is a small, homogeneous state in which the capture of constitutional institutions was relatively straightforward once the electoral majority was secured. India is a vast, diverse, and constitutionally complex state in which the federal structure, the multilinguistic and multicultural political landscape, and the institutional inheritance of decades of democratic competition provide more resilience and more resistance to total capture. The 2024 Indian general election result, in which the BJP lost its absolute majority and became dependent on coalition partners, is evidence of this resilience.

But resilience is not the same as immunity. The comparative constitutional lesson of Hungary is not that retrogression is inevitable or that it cannot be reversed (the Polish case in 2023-2024, where a coalition government has begun the difficult process of undoing the constitutional damage of the PiS government, suggests that reversal is possible). The lesson is that constitutional retrogression, once it reaches a certain threshold of institutional capture, becomes

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self-reinforcing and very difficult to reverse without a fundamental constitutional transformation. The institutions that would normally check retrogression, an independent judiciary, a free press, a robust civil society, an independent electoral commission, are precisely the institutions that retrogression targets. Once they are sufficiently weakened, the normal mechanisms of constitutional self-correction become unavailable.

India has not yet reached the threshold of irreversible institutional capture, but the direction of travel and the pace of institutional degradation are causes for serious constitutional concern. The 2024 election result provides a moment of potential reversal, but the structural constitutional features that enabled the retrogression of the preceding decade, the concentration of executive power, the gubernatorial system, the anti-defection law, the UAPA, the FCRA, the opacity of political finance, remain in place and will shape the constitutional landscape of the coming years.

6.3 South Africa's Constitutional Jurisprudence as a Model: Transformative Constitutionalism in Practice

Part Ten of this textbook introduced the concept of transformative constitutionalism, primarily through the work of Karl Klare and its South African application. This chapter extends that discussion to consider what the South African constitutional experience, in its successes and its failures, teaches about the possibilities and the limits of constitutional transformation in a society marked by deep historical injustice and structural inequality.

South Africa's 1996 Constitution is, by common consent of comparative constitutional scholars, the most ambitious transformative constitutional document in the world. It includes fully justiciable social and economic rights (sections 26, 27, and 28), strong equality provisions that apply both horizontally and vertically (i.e., against private actors as well as the state), a detailed Bill of Rights that addresses both the legacy of apartheid discrimination and the ongoing challenges of a society with extreme inequality, strong institutional protections for constitutional democracy including an independent human rights commission, an independent electoral commission, a public protector, and an independent judiciary appointed through a transparent constitutional process.

The South African constitutional order has delivered on some of its promises and failed on others. Its social and economic rights provisions have generated significant jurisprudence, most notably the Grootboom case (2001) on the right to housing and the Treatment Action Campaign case (2002) on the right of HIV-positive pregnant women to receive antiretroviral treatment. These cases demonstrate that justiciable social and economic rights can produce real outcomes for real people in ways that non-justiciable directive principles cannot. The court orders in these cases required the government to develop and implement housing programs and to provide treatment to pregnant women, with follow-up mechanisms to ensure compliance. This is transformative constitutionalism in action.

But the South African constitutional experience also illustrates the limits of constitutional design in the face of persistent political economy challenges. The ANC governments of the Zuma era engaged in systematic corruption and "state capture" that undermined constitutional institutions, weakened the public protector's office, compromised the NPA, and diverted state resources from

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the social and economic transformation that the Constitution required. The constitutional institutions survived, and the Constitutional Court's independence was never fully compromised, but the gap between constitutional aspiration and social reality in South Africa remains enormous, with extreme inequality, high unemployment, inadequate housing, and dysfunctional public services characterizing the lived experience of the majority of South Africans twenty-five years after the transition.

The lesson for India is nuanced. The South African constitutional design is significantly better than India's in the protection of social and economic rights, in the institutional independence of accountability bodies, and in the transparency and inclusiveness of constitutional processes. India would benefit greatly from constitutional reforms that moved in the South African direction. But the South African experience also demonstrates that constitutional design is necessary but not sufficient for the realization of constitutional rights: political will, institutional integrity, and civic culture are also essential, and these cannot be guaranteed by constitutional text alone.

6.4 Germany's Basic Law and the Model of Militant Democracy

The German Basic Law of 1949, drafted in the shadow of the Weimar Republic's failure and the Nazi catastrophe, embodies the concept of "militant democracy" (streitbare Demokratie) developed by the political theorist Karl Loewenstein: the idea that a democracy must be willing and able to defend itself against those who would use democratic processes to destroy democracy. The specific mechanisms through which the German Basic Law implements this concept include the eternity clause of Article 79(3), which prohibits any constitutional amendment that affects the federal character of the state, the distribution of the Federation and Lander, the basic principles laid down in Articles 1 (human dignity) and 20 (the constitutional state principle), even by constitutional amendment; the ability to ban political parties that seek to undermine the free democratic basic order under Article 21(2); and the ability to declare that persons who abuse constitutional rights for the purpose of attacking the free democratic basic order forfeit those rights under Article 18.

The German model is not perfectly applicable to the Indian context: India's constitutional challenges arise not primarily from anti-constitutional parties that must be banned but from the capture of state institutions by a party that operates within the formal electoral system while undermining its democratic substance. But the German concept of a constitution that actively defends its own democratic character, rather than merely protecting rights when challenged, offers important insights for the design of a reformed Indian constitution.

A reformed Indian constitution could include, on the German model, provisions that make certain structural features of constitutional democracy immune from amendment: the federal character of the state, the secular character, the independence of the judiciary, the freedom of the press, the right to form and operate civil society organizations. It could include provisions that require political parties to demonstrate their adherence to democratic principles as a condition of registration and participation in elections. It could include provisions that authorize constitutional courts to order the forfeiture of rights (including the right to hold office) by persons who systematically abuse constitutional powers to undermine democratic institutions.

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These are not radical or utopian proposals: they exist in various forms in established constitutional democracies. What makes them seem radical in the Indian context is the habit of constitutional minimalism about institutional design that this textbook has traced to the colonial inheritance of pragmatic governance and to the constitutional culture of a Constituent Assembly that was more confident in enumerating rights than in designing the institutions that would protect them.

6.5 The Nordic Constitutional Model: Democracy, Welfare, and Accountability

The constitutional systems of the Nordic states (Denmark, Finland, Iceland, Norway, Sweden) offer a very different model of constitutional design: one that is less formally elaborate than either the South African or the German constitutional orders but that achieves extremely high levels of democratic performance, constitutional governance, and social welfare delivery through a combination of constitutional and institutional features that are worth studying in the Indian context.

The Nordic model's constitutional features relevant to India include: strong formal protection of civil and political rights through international convention incorporation (all Nordic states have directly incorporated the European Convention on Human Rights into domestic law), extensive use of ombudsman institutions to provide accessible and inexpensive redress for administrative violations of rights, strong formal protection of freedom of information and press freedom through constitutional and statutory means, transparent political finance regimes that are strictly enforced, comprehensive legal aid systems that make the legal system genuinely accessible to the poor, and strong traditions of civic education that create an informed citizenry capable of using the constitutional system effectively.

None of these features requires the level of constitutional resources that India's elaborate fundamental rights jurisprudence demands. They are, in important respects, more effective than India's rights framework at delivering constitutional justice to ordinary citizens because they are simpler, more accessible, and better integrated into the everyday operation of the state. India's constitutional reform discourse often focuses on substantive rights provisions, which are important, at the expense of the institutional and procedural features that determine whether those rights can be realized in practice.

A reformed Indian constitution should attend as carefully to the institutional architecture of rights enforcement, the ombudsman systems, the legal aid framework, the information access regime, the political finance transparency requirements, as to the substantive content of the rights themselves. Rights without remedies are aspirations. Remedies without institutions are wishes. Constitutional reform that delivers substantive justice requires attention to all three dimensions.

CHAPTER SEVEN: THE INTERNATIONAL RULE OF LAW AND INDIA'S CONSTITUTIONAL CONTRADICTION

7.1 India's Contradictory Position as an International Legal Actor

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India's position in international law is characterized by a fundamental contradiction that pervades its engagement with every international institution and every international legal framework. On one side of this contradiction is India's formal commitment to the international legal order: its membership in the UN system, its ratification of numerous multilateral treaties, its active participation in international institutions, its claim to be a founding member of the non-aligned movement and a voice for the Global South, and its aspiration to a permanent seat on the UN Security Council as recognition of its status as a major democratic power.

On the other side is a domestic constitutional practice that systematically violates the international norms to which India claims commitment: the preventive detention without adequate safeguards that violates ICCPR Article 9, the torture in police custody that violates customary international law and the ICCPR even without UNCAT ratification, the communal violence and discrimination against religious minorities that violates ICCPR Article 27, the restrictions on civil society that violate ICCPR Article 22, the press freedom violations that violate ICCPR Article 19, and the treatment of asylum seekers that violates the customary international law principle of non-refoulement.

This contradiction is not new; it has characterized India's international legal posture since independence. But it has intensified significantly in the period since 2014 as the domestic constitutional violations have become more severe, more systematic, and less disguisable. India is maintaining the trappings of democracy while increasingly harassing the opposition, attacking minorities, and stifling dissent. Hindus for Human Rights The international community, which was long inclined to give India the benefit of the doubt as a genuine democracy in a difficult neighborhood, is increasingly confronted with evidence that challenges this characterization.

The international consequences of this contradiction are multiple. India's aspiration to a permanent UN Security Council seat is undermined by its democratic regression: the argument that India should be a permanent member of the Security Council as representative of democratic values and the Global South is weakened by a democratic record that fails international standards in significant respects. The argument that India is a "responsible stakeholder" in the international order is complicated by its record on human rights treaties. The argument that India is a natural partner for Western liberal democracies in managing the challenges of rising Chinese authoritarianism is complicated by the evidence that India's own governance is moving in authoritarian directions.

Despite the Modi administration's deteriorating human rights record, several countries strengthened security, economic, and trade ties with India. Human Rights Watch This pattern reflects the geopolitical calculus of states that value India as a strategic counterweight to China regardless of its domestic governance record. But it also reflects the short-term nature of strategic thinking that ignores the long-term risks of entrusting geopolitical functions to a state whose internal governance is under severe stress. A state whose constitutional order is being systematically weakened from within is not a reliable long-term strategic partner; the internal weaknesses will eventually manifest as external unreliability.

7.2 The Rule of Law Index and India's Constitutional Performance

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The World Justice Project's Rule of Law Index provides an annual cross-country comparison of rule of law performance across multiple dimensions including constraints on government powers, absence of corruption, open government, fundamental rights, order and security, regulatory enforcement, civil justice, and criminal justice. India's performance on this index, tracked over the period 2016-2025, reveals a consistent pattern of deterioration on dimensions related to democratic governance and rights protection, alongside relative stability on dimensions related to regulatory enforcement and order and security.

In the 2024 Rule of Law Index, India ranks 79 out of 142 countries overall. Its strongest performances are in Order and Security (where its large security apparatus delivers relatively high scores) and Regulatory Enforcement (where regulatory institutions function reasonably well). Its weakest performances are in Constraints on Government Powers (where the weakening of institutional checks on executive authority is reflected) and Criminal Justice (where the backlog, delays, and quality problems of the criminal justice system are documented). Its performance on Fundamental Rights has declined consistently over the period 2016-2024, reflecting the documented deterioration of civil liberties documented by Freedom House, V-Dem, and the Human Rights Watch and Amnesty International annual reports.

The Index's findings on Open Government are particularly relevant to the constitutional analysis of this textbook. Open government in the Rule of Law framework means government that publicizes its laws, makes the right to petition effective, enables civic participation, and enables complaint mechanisms to work. India's scores on these dimensions have declined, reflecting the restrictions on civil society through the FCRA, the weakening of right to information access through classification and delays, and the increasing barriers to civic participation in the policy process.

The constitutional significance of these index findings lies not in the specific rankings but in what they reveal about the relationship between constitutional design and rule of law outcomes. A constitutional framework that concentrates executive power without adequate accountability mechanisms will produce poor performance on constraints on government power. A legal system designed for a colonial administration's convenience rather than for citizens' access will produce poor performance on civil and criminal justice. A state that restricts civil society and press freedom will produce poor performance on open government. The Rule of Law Index is, in this sense, a measure of constitutional performance rather than merely of governmental behavior.

7.3 India's Engagement with the International Criminal Court: A Study in Strategic Abstention

India is not a member of the International Criminal Court (ICC) and has not ratified the Rome Statute. This non-ratification is a deliberate and long-standing policy choice, reflecting concerns about sovereignty, about the potential application of the Court's jurisdiction to Indian security operations in conflict zones, and about the perceived bias of international criminal justice toward prosecuting leaders from developing and postcolonial states.

The sovereignty concerns are genuine and not unique to India: many states, including the United States, Russia, China, and Israel, have refused to join the ICC for various combinations of

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sovereignty concerns and specific policy objections. But India's refusal needs to be understood in the context of the pattern of behavior it is part of: a consistent approach of refusing accountability mechanisms that could scrutinize Indian state conduct, while participating in forums and making claims of international legitimacy that depend on the credibility of commitment to international law.

The specific conduct most likely to attract ICC scrutiny if India were a member, and most clearly illustrative of why India is not, includes: the AFSPA's effective immunity framework for extrajudicial killings and torture in conflict zones, the treatment of political opponents and civil society activists under the UAPA, the pattern of communal violence with alleged state complicity, and the treatment of populations in Jammu and Kashmir and the northeastern states. Whether any specific Indian conduct would meet the ICC's threshold for prosecution, which requires that crimes against humanity or war crimes reach a certain scale and that domestic courts be unable or unwilling to prosecute them, is a complex legal question that need not be resolved here. The relevant constitutional point is that India's non-ratification of the Rome Statute is part of a consistent constitutional strategy of excluding the most authoritative international accountability mechanisms from the range of mechanisms that can scrutinize Indian state conduct.

The constitutional theory underlying this strategy is an extreme version of Westphalian sovereignty: the idea that a sovereign state is accountable only to its own constitutional processes and to the international mechanisms it voluntarily accepts. In a domestic constitutional context, this is an argument for unreviewable executive power. In an international context, it is an argument against the universality of international human rights norms. Both versions of the sovereignty argument are incompatible with genuine constitutional democracy, which requires the subordination of power (including state power) to law, and with genuine internationalism, which requires the acceptance that some norms bind all states regardless of consent.

7.4 India's UN Security Council Candidacy and the Democracy Argument

India's long-standing aspiration to a permanent seat on the UN Security Council is premised on several arguments: India's size and population (the world's largest democracy by population), its economic weight (the world's fifth or fourth largest economy by GDP), its geographic and strategic significance, its contribution to UN peacekeeping operations, and its claim to represent the democratic values and the developmental aspirations of the Global South.

The democracy argument is perhaps the most potent, because it distinguishes India from the other major powers that might be considered for permanent membership (Brazil, Japan, Germany) by giving India a normative character as well as a strategic weight. India as the world's largest democracy, with a constitutional order committed to human rights and the rule of law, is a different and more valuable Security Council member than India as merely a large state with economic and military weight.

But the democratic argument is being progressively undermined by the evidence of democratic regression. Freedom House rates India "Partly Free" in its 2025 report, with a score of 63/100. V-Dem's Democracy Report 2025 classifies India as an "electoral autocracy" by 2019, describing

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a longer arc of autocratization. Hindus for Human Rights A state classified as an electoral autocracy by the most authoritative comparative democracy research institute in the world cannot credibly claim a Security Council permanent seat on the basis of its democratic character. The democratic regression is not merely a domestic constitutional problem; it is a direct cost to India's international ambitions and a direct consequence of the constitutional choices that this textbook has been analyzing.

The constitutional reform required to restore India's democratic credibility is not a short-term political task. It requires reversing the institutional damage of the past decade, restoring the independence of the Election Commission and other constitutional bodies, reforming the security law framework, re-opening civil society space, and demonstrating through sustained practice that India's constitutional democracy is genuine rather than nominal. This is a generational constitutional project, not a political marketing exercise.

CHAPTER EIGHT: CORRUPTION, THE CONSTITUTIONAL ORDER, AND INDIA'S INTERNATIONAL IMAGE

8.1 The Constitutional Economy of Corruption: International Dimensions

Corruption in India is not a cultural pathology or an incidental feature of the political system. As earlier Parts of this textbook have argued, it is a structural consequence of a constitutional order that creates large discretionary powers for public officials without adequate accountability mechanisms, that maintains the colonial administrative framework of bureaucratic gate-keeping without adequate transparency or rule-of-law constraints, and that enables the capture of state institutions by economic and political elites who use them for private benefit rather than public purpose.

The international dimensions of India's constitutional economy of corruption are multiple and significant. First, corruption undermines India's investment environment and its economic competitiveness, reducing the quality of governance that foreign investors and international economic partners experience. Second, corruption undermines India's credibility as a partner in international development and aid programs: the experience of international aid agencies and development organizations working in India has been consistently marked by the challenge of ensuring that aid resources reach their intended beneficiaries rather than being captured at various levels of the administrative hierarchy. Third, corruption undermines India's ability to project soft power through the model of democratic governance: a state whose governance is characterized by pervasive corruption is not a convincing model for other developing democracies.

The Transparency International Corruption Perceptions Index 2024 ranks India at 93 out of 180 countries, with a score of 39 out of 100. This places India in the bottom half of the global distribution, below all the established democracies and below many of India's aspirational peers. The score reflects perceptions of corruption in the public sector that are consistent with the structural analysis of constitutional corruption in previous Parts of this textbook.

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The constitutional dimension of India's corruption problem is often missed by analyses that focus on governance quality as a matter of political culture or administrative capacity. The constitutional architecture creates corruption: the combination of extensive licensing and regulatory requirements (inherited from the colonial administrative model), large budgets for welfare delivery without adequate accountability mechanisms (the consequence of non-justiciable directive principles that create spending obligations without enforcement mechanisms), political financing that depends on corporate donations in exchange for policy favors (the consequence of the constitutional silence on party finance), and the judicial delays that make the threat of anti-corruption prosecution non-credible for the powerful (the consequence of an under-resourced judiciary operating within a constitutional framework designed for a much smaller state), these are constitutional causes that produce the corruption that international indices measure.

8.2 The Electoral Bonds Scheme: Constitutional Corruption Legalized

The Electoral Bonds Scheme, which the Supreme Court struck down in February 2024 in Association for Democratic Reforms v. Union of India, is perhaps the most direct example of constitutionalized corruption in recent Indian history. The scheme, introduced through amendments to the Finance Act, 2017 and the Foreign Contribution (Regulation) Act, without any separate public deliberation or parliamentary scrutiny specific to the scheme's implications, allowed any person or corporation to purchase electoral bonds from the State Bank of India and donate them anonymously to political parties.

The constitutional infirmities of the scheme, as identified by the Supreme Court's unanimous five-judge bench, were multiple. The scheme violated the constitutional right to information by concealing the identity of donors from the public, while simultaneously allowing the government (which could identify donors through its control of the SBI) to know who had donated and how much to whom. This created a structural information asymmetry: the state could identify corporate donors and their donation amounts, giving the ruling party a potential tool for identifying corporations that had donated to opposition parties and potentially retaliating through regulatory mechanisms, while concealing this information from citizens who had a constitutional right to know who was financing their representatives.

The scheme's constitutional violation of equality before the law was equally stark: by allowing unlimited anonymous corporate donations to political parties, it removed the formal limits on corporate influence over politics that earlier legislation had imposed, and it did so in a manner that disproportionately benefited the ruling party, which received approximately half of all electoral bonds issued, according to data released by the SBI following the Supreme Court's order.

The international dimensions of the electoral bonds scandal are significant. Foreign investors and international partners regularly cite political finance transparency as a factor in their assessment of governance quality. A system that legalized opacity in the single largest source of political finance, that was used to channel billions of rupees to political parties from corporations in regulated industries, and that the Supreme Court ultimately found to be unconstitutional, represents a profound governance failure that has contributed to the decline in India's scores on

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international governance indices and to the skepticism of international partners about the integrity of Indian regulatory and policy processes.

8.3 The Enforcement Directorate and the Weaponization of Anti-Corruption Law

The constitutional irony of the Indian state's approach to corruption is nowhere more evident than in the use of the Enforcement Directorate (ED) and the Central Bureau of Investigation (CBI) against political opponents while the structural conditions for corruption that the constitutional order creates remain entirely intact.

The ED, which enforces the Foreign Exchange Management Act and the Prevention of Money Laundering Act (PMLA), has been transformed in the period 2014-2026 from a financial investigation agency into a primary instrument of political targeting. The statistical evidence for this transformation is compelling: the number of PMLA cases registered, the number of raids conducted, and the number of assets attached by the ED have increased dramatically during the Modi government, while the conviction rate has remained extremely low, suggesting that the purpose of the ED's action is not primarily conviction but disruption of political opponents' activities and finances.

The constitutional analysis of the ED's use begins with the Prevention of Money Laundering Act, which the Supreme Court in Vijay Madanlal Choudhary v. Union of India (2022) upheld in a controversial decision that expanded the ED's powers significantly. The Court upheld the PMLA's provisions allowing the ED to arrest without producing evidence meeting the standard for arrest under the Code of Criminal Procedure, to deny bail on the basis of very low standards, and to conduct searches and seizures with minimal judicial oversight. The dissenting analysis of several constitutional scholars has argued that the Choudhary decision effectively created a parallel criminal law framework for financial crimes that bypasses the procedural protections of the main criminal law, in a manner inconsistent with the constitutional right to personal liberty under Article 21.

The Supreme Court's 2025 judgment in the bail applications of Delhi Chief Minister Arvind Kejriwal (arrested in connection with the Delhi liquor policy case) and several Congress leaders (arrested in connection with the National Herald case) has been widely criticized for the inconsistency with which it has applied bail standards in politically sensitive cases. The contrast between the rapid bail granted to BJP-aligned accused in various criminal cases and the prolonged pre-trial detention of opposition politicians in ED and CBI cases has created a constitutional perception, supported by statistical analysis, that the criminal justice system is being applied asymmetrically in ways that correspond to political alignment rather than legal principle.

This asymmetric application of the law is a constitutional violation of the equality guarantee of Article 14 regardless of whether any specific prosecution is formally illegal. The Supreme Court's equality jurisprudence holds that the principle of equality before the law requires not merely formal legal equality (the same legal rules apply to all) but substantive equality (those rules are applied consistently, without discrimination, and without regard to irrelevant factors such as political affiliation). A pattern of prosecutorial targeting based on political affiliation

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violates this constitutional guarantee even if each individual prosecution complies with the formal legal requirements.

CHAPTER NINE: INDIA'S CONSTITUTIONAL ARCHITECTURE AND THE THEORY OF AUTHORITARIAN LEGALISM

9.1 Authoritarian Legalism: A Theoretical Framework

The concept of "authoritarian legalism" developed by scholars including Mark Tushnet, Tom Ginsburg, and more recently Tamir Moustafa in the context of Middle Eastern legal systems, provides a theoretical framework for understanding a form of governance that uses law not as a constraint on power but as an instrument of power: a form in which the trappings of the rule of law, courts, statutes, constitutional provisions, procedures, are maintained and even elaborated, while the substance of law as a check on power is systematically drained away.

Authoritarian legalism is distinct from straightforward authoritarianism (which abandons legal forms entirely) and from liberal constitutionalism (which uses legal forms genuinely to constrain power). It occupies an intermediate position characterized by the elaboration of legal procedures that legitimate authority while excluding the substantive constraints that genuine rule of law would impose. In authoritarian legalism, courts exist but defer; statutes proliferate but are designed to serve power; constitutional rights are proclaimed but interpreted to exclude effective enforcement against the state; anti-corruption laws are enacted but applied selectively against the powerless and the politically inconvenient.

The description fits India's contemporary constitutional order with uncomfortable precision. The Supreme Court of India is one of the most institutionally elaborate constitutional courts in the world, with an enormous jurisdiction, a rich jurisprudential tradition, and a history of landmark decisions that have advanced constitutional rights in important ways. But its response to the most politically sensitive constitutional challenges of the past decade has been characterized by the combination of doctrinal sophistication and practical deference that is the hallmark of authoritarian legalism: the Court can articulate the constitutional principle while declining to enforce it in the specific case before it.

The UAPA cases are the clearest illustration. The Supreme Court has articulated, in careful doctrinal language, the principles governing bail in UAPA cases, the rights of the accused, and the limits of preventive detention. But its application of these principles in specific high-profile cases involving activists, journalists, and opposition politicians has been characterized by deference to the government's security arguments that critics find constitutionally inadequate. The result is a body of law that is constitutionally advanced in principle and constitutionally inadequate in practice.

The Bhima Koregaon case, as analyzed in earlier chapters of this Part, illustrates the full operation of authoritarian legalism: a prosecution based on evidence that forensic experts have characterized as fabricated, conducted under a law whose standards the court itself has

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characterized as making bail virtually impossible, against persons whose international law rights have been found by UN bodies to be violated, proceeding for seven years without trial while the accused remain in pre-trial detention. Every element of this situation is legally formalized: the arrests were made under a valid statute, the bail denials follow the court's precedents, the prosecution follows the procedural rules. But the outcome is the imprisonment of human rights defenders on the basis of evidence that professional forensic analysts characterize as planted. This is authoritarian legalism in its fullest expression: law deployed against constitutional values in the name of constitutional authority.

9.2 The Bhima Koregaon Paradigm and the International Theory of Lawfare

The international human rights community has developed the concept of "lawfare" to describe the strategic use of law as a weapon against human rights defenders: the use of prosecution, litigation, regulatory restriction, and administrative harassment to silence critics, punish advocacy, and deter others from engaging in similar work. Lawfare is distinct from genuinely criminal prosecution in that its primary purpose is suppression rather than justice; it uses legally available tools for legally illegitimate purposes.

India's treatment of human rights defenders, documented extensively in the preceding chapters of this Part, exhibits the classic features of lawfare. The pattern includes: strategic use of the UAPA to justify long pre-trial detention without bail; sequential filing of multiple cases in multiple jurisdictions to multiply the legal costs and time burdens on defenders; use of the FCRA to defund organizations that might otherwise support defenders; raids on lawyers who represent defenders to obtain privileged communications; harassment of family members to create collateral pressure; delays in the provision of bail even when courts order it; and prison conditions that deteriorate the health of those detained.

Since 2018, at least 61 HRDs have been jailed under the UAPA and/or terror/security laws. OMCT The profile of those targeted reveals the pattern of lawfare with clarity: they are not persons who have committed violent acts or who pose genuine security threats, but persons who have documented violations, organized the marginalized, advocated for constitutional rights, and spoken truth about power. Their prosecution is not a prosecution of criminals: it is a prosecution of constitutionally protected activity. The constitutional inversion, the use of legal process to punish the exercise of constitutional rights, is the defining feature of lawfare and the defining feature of the contemporary Indian state's relationship with its most principled citizens.

The international community has developed several responses to lawfare. The UN Declaration on Human Rights Defenders (1998) recognizes the right of individuals to work for the promotion and protection of human rights and creates obligations for states to protect rather than persecute those who do so. The Special Rapporteur on Human Rights Defenders' mandate includes the monitoring and reporting of lawfare. Regional human rights bodies have issued guidelines on the use of strategic litigation against public participation (SLAPP suits) that, while primarily addressed to private actors, are applicable by analogy to state-sponsored legal harassment. International guidelines on the protection of journalists, such as the UNESCO Safety of Journalists Guidelines, recognize the pattern of legal harassment of journalists as a serious threat to press freedom requiring international response.

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India has rejected these frameworks as applied to its own conduct, characterizing prosecutions of defenders and journalists as legitimate enforcement of domestic law against persons who have committed genuine offenses. The rejection is formally available in an international legal system that gives significant deference to domestic criminal justice processes. But the pattern of cases, the nature of the accused, the evidence of politically motivated targeting, and the authoritative findings of UN bodies all contradict the claim of genuine criminal justice and support the characterization of lawfare.

9.3 The Concept of Constitutional Decay: Gradual Erosion as Constitutional Crisis

The concept of "constitutional decay" developed by constitutional theorist Samuel Issacharoff provides a framework for understanding how constitutional orders lose their vitality not through dramatic events of rupture but through the gradual erosion of the norms, practices, and institutional cultures that give constitutional provisions their life. Constitutional decay is the slow death of constitutional democracy: a death by a thousand cuts, each individually small enough to be rationalized, defended, or ignored, but together constituting a transformation of the constitutional order from one in which rights are real to one in which rights are nominal.

The Indian constitutional order exhibits multiple symptoms of constitutional decay. The independence of constitutional institutions, the Election Commission, the Central Bureau of Investigation, the Enforcement Directorate, the National Human Rights Commission, has declined not because constitutional provisions establishing their independence have been amended (though the Election Commission appointment process was changed in 2023) but because the norms governing appointments to these bodies have been compromised, the cultures within them have been shaped by the expectation of alignment with the government, and the signals sent by the government's treatment of those who do maintain independence (adverse transfers, selective prosecutions, institutional harassment) have created a culture of compliance that formal provisions of independence do not prevent.

The constitutional culture of civil liberties, the shared understanding among political actors, judges, lawyers, civil society, and citizens that certain forms of government conduct are constitutionally impermissible even if formally authorized, has been significantly eroded. The normalization of detention without trial for activists, the normalization of punitive demolitions as an extra-judicial punishment, the normalization of press self-censorship in the face of sedition threats, the normalization of civil society organizations closing because of FCRA pressure, these normalizations represent a constitutional decay that is not visible in the text of the Constitution but is fully visible in the lived experience of constitutional governance.

The theory of constitutional decay suggests that reversal requires not merely legal reform but cultural and institutional reconstruction. The legal reforms are necessary: removing the UAPA's bail provisions, reforming the FCRA, restoring the Election Commission's independence, reforming the collegium system. But they are not sufficient without the reconstruction of constitutional norms that make officials in constitutional institutions understand their duty to the Constitution rather than to the government. This is a generational project.

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CHAPTER TEN: TOWARDS A REFORMED CONSTITUTIONAL ARCHITECTURE: THE INTERNATIONAL PERSPECTIVE

10.1 International Standards and Constitutional Design: What India's Treaties Require

The international human rights treaty obligations that India has accepted, when taken seriously as constitutional constraints rather than merely as international obligations, provide a baseline for constitutional reform. A reformed Indian constitution that genuinely complied with the ICCPR, the ICESCR, the CERD, the CEDAW, the CRC, and the other instruments India has ratified would look significantly different from the current constitution in several key respects.

The ICCPR requires, among other things, that no one be subjected to arbitrary arrest or detention, that everyone charged with a criminal offense be tried without undue delay, that everyone has the right to a fair and public hearing by a competent, independent, and impartial tribunal established by law, that the right to bail shall be the norm and detention the exception, that freedom of expression shall be protected with restrictions only as provided by law and necessary for respect of the rights of others or for the protection of national security or public order, and that the right to peaceful assembly shall be recognized. Every one of these requirements is systematically violated by the UAPA's detention provisions, the criminal justice system's delays, the IT Rules' restrictions on speech, and the pattern of assembly bans and UAPA prosecutions of protesters.

A reformed constitution that genuinely implemented the ICCPR would need to include: a constitutional prohibition on detention without charge for more than 24 hours without judicial authorization; a constitutional right to bail in all cases except where specific, judicially reviewable criteria for continued detention are met; a constitutional guarantee of trial within one year for all detained accused; a constitutional limitation on speech restrictions to cases of imminent and probable harm, specifically defined by law; a constitutional right to assemble without prior permission except in cases of imminent and serious public danger, as judicially determined.

The ICESCR requires progressive realization of social and economic rights to the maximum of available resources. As noted in earlier Parts of this textbook and as argued in the context of transformative constitutionalism, the making of these rights justiciable would be a constitutional transformation of the welfare state from aspiration to obligation. The specific content of justiciable social rights would need to be developed through constitutional text and judicial interpretation, drawing on the South African and other comparative models, but the constitutional commitment to justiciability is the foundational requirement.

The CERD requires comprehensive anti-discrimination legislation covering racial and ethnic discrimination in employment, housing, education, and access to services. India's claim that subject-specific legislation addresses all ICCPR and CERD provisions was specifically contested by the UN Human Rights Committee in 2024, which noted the absence of comprehensive anti-discrimination legislation. A reformed constitution should include explicit authorization and direction for the enactment of comprehensive anti-discrimination legislation covering caste (as a

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form of descent-based discrimination that CERD covers), religion, ethnicity, gender, disability, and sexual orientation in both the public and private sectors.

10.2 A Constitutional Foreign Policy: Norms, Institutions, and Democratic Accountability

The constitutional treatment of foreign policy in India reflects the broader pattern of executive concentration without adequate accountability that has been analyzed throughout this textbook. Foreign policy is treated as a prerogative of the executive, with Parliament playing a minimal formal role in treaty ratification (India has no formal treaty ratification process requiring parliamentary approval comparable to the US Senate's advice and consent role) and no formal role in decisions about the use of military force abroad.

A reformed constitution should include constitutional provisions for democratic accountability in foreign policy. These should include: a requirement of parliamentary ratification of significant international treaties (defined by scale, duration, and commitment) before they enter into force; a constitutional requirement of parliamentary authorization for the conduct of military operations outside Indian territory beyond a defined threshold of scale and duration; a constitutional requirement of parliamentary oversight of intelligence agencies, through a security committee of Parliament similar to those in the US, UK, and other democracies; a constitutional requirement of public consultation for major foreign policy decisions with significant domestic impact, such as the terms of free trade agreements; and a constitutional obligation to report to Parliament on India's compliance with international human rights treaty obligations, with a mechanism for civil society input to those reports.

These foreign policy accountability provisions would serve multiple purposes. They would reduce the risk that foreign policy is used to serve domestic political interests rather than genuine national interests. They would increase the democratic legitimacy of India's international commitments. They would align India's practice with the constitutional values of democratic accountability and separation of powers. And they would address the structural connection between executive autonomy in foreign policy and the pattern of disastrous diplomatic outcomes that has characterized the period 2015-2026.

10.3 The National Human Rights Commission: Toward a Genuinely Independent Body

The reform of the National Human Rights Commission is a constitutional priority that is directly connected to India's international human rights obligations. The GANHRI's recommendation for downgrading reflects real structural problems: appointment by the executive without independent scrutiny, exclusion of jurisdiction over armed forces, dependence on government for operational infrastructure, and inadequate engagement with civil society.

A reformed NHRC would require constitutional status rather than statutory status, an independent appointment process comparable to the independent judicial appointment commission proposed for the judiciary, full jurisdiction over all state actors including the armed forces (with appropriate procedures for national security sensitive information), financial independence from the executive, powers to make recommendations directly to Parliament, and a mandate to engage substantively with international human rights bodies on India's treaty

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compliance. Comparative models from countries including South Africa (the Human Rights Commission is constitutionally established under Section 184), Ireland (the Irish Human Rights and Equality Commission), and the UK (the Equality and Human Rights Commission) offer useful design guidance.

The constitutional entrenchment of the NHRC, combined with a reformed appointment process and full jurisdictional coverage, would transform it from the current accountability theater into a genuine constitutional institution capable of protecting rights. This transformation would require political will that is currently absent but that a reformed constitutional process could create as part of a comprehensive constitutional reconstruction.

10.4 International Courts, Arbitration, and Constitutional Sovereignty

A frequently overlooked dimension of India's constitutional architecture is its approach to international dispute resolution. India has a mixed record of participation in international dispute resolution: it participates in WTO dispute settlement, in UNCLOS-based maritime arbitration (though with qualifications), in bilateral investment treaty arbitration (with a move away from BITs after adverse decisions), and in the ICJ (though India has not accepted the ICJ's compulsory jurisdiction under Article 36(2) of the ICJ Statute).

The refusal to accept the ICJ's compulsory jurisdiction means that India cannot be brought before the ICJ by another state without India's consent. This is a position shared by many states including the United States and China, but it limits the use of international adjudication for the peaceful resolution of India's bilateral disputes, including the maritime boundary disputes with Pakistan and with Bangladesh, the land border disputes with China, and the Indus Waters Treaty dispute with Pakistan.

A reformed constitutional approach to international dispute resolution would acknowledge that the international rule of law requires genuine commitment to peaceful dispute resolution through international mechanisms, not merely the formal availability of negotiation. This requires accepting the jurisdiction of international tribunals in appropriate categories of disputes, reforming domestic constitutional provisions to allow the implementation of international tribunal decisions, and developing a culture of international legal engagement that treats international judicial decisions as authoritative rather than as advisory opinions to be accepted or rejected on political grounds.

CHAPTER ELEVEN: CIVIL SOCIETY, CONSTITUTIONAL RESISTANCE, AND THE INTERNATIONAL SOLIDARITY NETWORK

11.1 The Role of International Civil Society in Constitutional Accountability

The constitutional resistance movements analyzed in Part Eleven of this textbook operate not in isolation but in connection with international civil society organizations, international media, international academic communities, and international diaspora communities that amplify their

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voices, document their struggles, and create international political pressure for constitutional accountability.

This international solidarity network is an important constitutional resource that is frequently underappreciated in the constitutional theory of resistance. International civil society organizations including Amnesty International, Human Rights Watch, Reporters Without Borders, the Committee to Protect Journalists, Front Line Defenders, and dozens of others play a crucial role in documenting violations, amplifying voices that are suppressed within India, bringing violations to the attention of international mechanisms, and creating the political costs for constitutional violations that domestic accountability mechanisms are inadequate to impose.

The constitutional significance of this international solidarity network is twofold. First, it provides a form of extraterritorial accountability that partially compensates for the inadequacy of domestic accountability mechanisms. When Indian courts are slow or deferential, when the NHRC is compromised, when Parliament is captured by the executive, the documentation and advocacy of international civil society keeps the record of constitutional violations visible and the possibility of future accountability real. Second, it provides crucial support to domestic civil society organizations that are under severe pressure from the state: international funding (through channels that remain available despite FCRA restrictions, including through Indian organizations' international affiliates and through diaspora fundraising), international recognition (which provides some protection from the most extreme forms of state repression), and international solidarity that reduces the isolation that state repression seeks to impose.

The Indian government's response to this international civil society engagement has been to characterize it as foreign interference in domestic affairs, as the deployment of "foreign funded NGOs" to destabilize India, and as coordinated action by organizations "unfriendly to India." This characterization is constitutionally significant: it frames the international solidarity network not as legitimate human rights advocacy but as a security threat requiring counter-measures through the FCRA and related instruments. The framing is constitutionally incorrect (international human rights advocacy is a legitimate exercise of the freedom of expression and association that the Indian Constitution guarantees) and internationally unlawful (states have international obligations to enable rather than restrict the work of human rights defenders, including those who engage with international bodies).

The recent Amnesty International India case is paradigmatic. Amnesty International India closed its operations in 2020 after the government froze its bank accounts through an FCRA investigation. The organization had been actively documenting human rights violations in India, including the CAA protests, the situation in Kashmir, and the Bhima Koregaon prosecutions. Its closure removed a major source of professional human rights documentation from the Indian landscape. The constitutional analysis of its closure, through the lens of the rights to expression, association, and information, leads to the conclusion that it was a constitutionally impermissible suppression of legitimate civic activity. The international law analysis leads to the same conclusion.

11.2 The Indian Diaspora and Constitutional Accountability

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The Indian diaspora, particularly in the United States, the United Kingdom, Canada, and Australia, plays an increasingly significant role in the international dimensions of India's constitutional debates. The diaspora includes both ardent supporters of the Modi government's constitutional agenda (many diaspora communities have been among the most enthusiastic supporters of Hindu nationalism) and fierce critics who use their position in Western democracies to advocate for constitutional reform and to mobilize political pressure on host governments to raise human rights concerns with India.

The constitutional significance of diaspora engagement is complex. On the supportive side, diaspora support for Hindu nationalism has provided the financial and ideological resources that have contributed to the RSS's global organizational expansion and to the BJP's political consolidation. On the critical side, diaspora advocates for constitutional accountability in India have created political environments in countries including Canada, the United Kingdom, and the United States in which the host governments face domestic political pressure to raise human rights concerns with India in bilateral and multilateral forums.

The Canadian government's accusations in 2023 that Indian intelligence agents were responsible for the assassination of Canadian Sikh leader Hardeep Singh Nijjar on Canadian soil represents the most dramatic international manifestation of this diaspora politics. The constitutional dimensions of the accusations, if proven, are profound: a democratic state using extraterritorial assassination to silence critics is engaged in conduct that violates both international law and the constitutional values that the state claims to embody. The Indian government has denied the allegations and characterized them as interference in Indian sovereignty. The investigation is ongoing.

The Nijjar case, alongside similar allegations of Indian intelligence targeting of Sikh and Pakistani nationals in the United States and elsewhere, has significantly damaged India's relationships with Western democracies and has raised concerns about the extension of India's security state beyond its borders. The constitutional analysis connects directly to the broader argument of this textbook: a constitutional order that concentrates security power without adequate accountability mechanisms, that operates a surveillance state without adequate oversight, and that treats political dissent as a security threat creates the institutional and cultural conditions from which extraterritorial security operations can emerge.

11.3 International Media and the Visibility of Constitutional Failure

The role of international media in documenting and communicating India's constitutional failures is a significant factor in the international accountability landscape. The BBC's documentary "India: The Modi Question," which examined the circumstances of the 2002 Gujarat riots and Narendra Modi's role as Chief Minister during them, prompted the Indian government to block its broadcast in India and to conduct Income Tax surveys of the BBC's Indian offices in 2023. The constitutional analysis of these actions, through the lens of press freedom and the freedom of expression, identifies them as constitutionally impermissible retaliation against journalism that the government found embarrassing.

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The international media's documentation of India's constitutional failures, including the Pegasus scandal, the Bhima Koregaon prosecutions, the bulldozer demolitions, the CAA protests, the FCRA targeting of civil society, and the pattern of custodial deaths, has created a global information environment in which India's claims to democratic leadership are systematically challenged by credible reporting of constitutional violations. Press freedom is an especially sharp diagnostic because it reflects whether the public can know what power is doing. Reporters Without Borders' materials on the 2025 World Press Freedom Index place India at 151/180 with a score of 32.96, and describe a harsh environment for independent journalism. Hindus for Human Rights

The constitutional significance of India's international press freedom ranking is not merely reputational. It is substantive: a society in which the press is not free, in which journalists face imprisonment, harassment, and economic pressure for critical reporting, is a society in which the democratic accountability of government that free press enables is compromised. The connection between press freedom and democratic accountability is constitutional, not merely political: a free press is a constitutional necessity in a system committed to democratic self-governance, and the systematic suppression of press freedom is a constitutional violation as much as a political one.

CHAPTER TWELVE: THE PATH FROM HERE: CONSTITUTIONAL TRANSFORMATION AND THE INTERNATIONAL DIMENSION

12.1 The International Case for Constitutional Transformation in India

The preceding chapters of this Part have established a comprehensive international case for constitutional transformation in India. The case rests on the following elements, taken together.

India has accepted international human rights obligations that it systematically fails to fulfill, and the failure is not incidental or remediable through minor adjustments but structural, rooted in the constitutional architecture that creates and enables the violations. The constitutional architecture that generates these violations, the security law framework inherited from colonialism, the preventive detention provisions, the weak federalism, the executive concentration without accountability, the absence of justiciable social rights, these are features that cannot be reformed through political will alone because they are constitutionally embedded and protected by the political interests of those who benefit from them.

The international human rights system has documented these failures with unusual thoroughness and consistency across multiple mechanisms and over multiple decades. The documentation is not politically motivated selectivity: it is the systematic application of international standards to a constitutional order that falls significantly short of those standards in multiple dimensions. The documentation creates an international legal and political record that India cannot evade by diplomatic management indefinitely.

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India's democratic regression, confirmed by multiple international democracy indices and reflected in the deterioration of its performance on rule of law, press freedom, civil liberties, and political rights measures, is damaging India's international standing, its aspirations to global leadership, its relationships with democratic partners, and its capacity to exercise regional influence. The regression is not a temporary phenomenon that will self-correct: it is the product of structural constitutional features that will continue to operate unless reformed.

The international community's tolerance for India's constitutional failures, motivated by geopolitical considerations including India's role as a counterweight to China, is a temporary indulgence that will face increasing pressure as the violations become more visible, as domestic constitutional resistance grows, and as the gap between India's international claims and its constitutional practice widens. In September, the European Union unveiled its "New Strategic EU-India Agenda," hailing India as a 'like-minded and trusted partner,' but deliberately overlooking India's deepening human rights crisis. At time of writing, free trade negotiations continued and it was unclear whether the agreement would include enforceable human rights obligations. Human Rights Watch The EU-India relationship, which represents India's most important Western partnership, is being built on a foundation of overlooked human rights concerns that will eventually become unsustainable if the constitutional violations continue and intensify.

The constitutional transformation required is not modest reform at the margins. It is fundamental reconstruction of the constitutional architecture in the direction of a genuinely democratic, rights-protective, federal, and accountable constitutional order. The preceding Parts of this textbook, and the proposals outlined in Part Ten, provide the substantive content of that transformation. The contribution of this Part is to establish the international dimensions of the case: that constitutional transformation in India is not merely a domestic political aspiration but an international legal obligation, a regional strategic necessity, and a prerequisite for India's legitimate global leadership.

12.2 International Frameworks for Constitutional Reform: The Role of the UN and Regional Bodies

The international human rights system offers several mechanisms through which external support for constitutional reform in India can be provided. These mechanisms are not coercive: they cannot compel India to reform its constitution. But they can create political incentives, provide technical assistance, and maintain the international visibility of the reform agenda in ways that support domestic reform advocates.

The Universal Periodic Review process provides the most systematic mechanism for international engagement with India's constitutional reform agenda. The recommendations of the UPR Working Group in successive cycles, if consistently and specifically focused on the constitutional reforms that are required, provide an authoritative statement of the international community's expectations. India's engagement with the UPR process, characterized as it currently is by the acceptance of non-threatening recommendations and the rejection or non-implementation of challenging ones, could be transformed if there were greater international pressure for genuine implementation accountability.

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The UN treaty bodies provide mechanisms through which constitutional reform recommendations can be developed in detail and with legal authority. The Human Rights Committee's recommendations on ICCPR compliance, the CERD Committee's recommendations on equality and anti-discrimination, the CEDAW Committee's recommendations on gender equality, all provide specific and authoritative standards against which constitutional reform proposals can be measured and to which domestic reform advocates can point in their advocacy.

UN Special Procedures visits, if India were to permit them from the most relevant mandates, could provide detailed and authoritative documentation of specific constitutional failures and specific reform recommendations. The Special Rapporteur on Torture's visit would provide the most authoritative assessment of India's compliance with the prohibition of torture, the strongest possible foundation for the argument that India must ratify the UNCAT and enact domestic anti-torture legislation. The Special Rapporteur on Human Rights Defenders' visit would provide the most authoritative assessment of the FCRA and UAPA as instruments of lawfare.

Regional mechanisms are less available to India than to states in other regions: India is not part of any regional human rights system comparable to the European, Inter-American, or African human rights systems. The development of an Asian human rights system, which has been under discussion in various forums for decades, remains elusive because of the resistance of major Asian states including India, China, and others to binding regional human rights obligations. An Asian human rights system, if it were ever established, would provide an additional layer of accountability for India's constitutional violations and an additional source of normative pressure for constitutional reform.

12.3 The Transformative Moment: Constitutional Crisis as Constitutional Opportunity

Constitutional crises, as historical experience across many countries demonstrates, are moments of both danger and opportunity. The danger is that crisis conditions are exploited by those who seek to further concentrate power and further undermine constitutional democracy. The opportunity is that crisis conditions create pressure for constitutional transformation that is unavailable in more stable times.

India is in a period of constitutional crisis, as the evidence assembled throughout this textbook demonstrates. The crisis is not acute in the sense of a dramatic single event (though the May 2025 conflict and its aftermath represents a moment of acute stress). It is structural and cumulative, the product of decades of constitutional drift and recent acceleration of constitutional regression. But it is a crisis nonetheless, recognized as such by the international community, by domestic critics, by the constitutional institutions themselves in their moments of judicial candor, and by the millions of citizens who experience its consequences daily.

The 2024 election result, which reduced the BJP to coalition dependence and demonstrated the resilience of Indian electoral democracy, provides a moment of partial constitutional recovery from which further recovery is possible. The Judiciary's decisions in 2023-2025 on electoral bonds, gubernatorial delay in assenting to bills, punitive demolitions, and on other constitutional questions represent moments of institutional resilience that coexist with the broader pattern of deference. The civil society organizations that continue to operate despite FCRA pressure, the

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journalists who continue to report despite the risk of sedition prosecution, the lawyers who continue to represent UAPA accused despite the professional and personal costs, these are the human substance of constitutional resistance.

The constitutional transformation that India needs will not come easily or quickly. It will require a political coalition capable of pursuing it, a civic culture capable of supporting it, and an intellectual framework capable of justifying it. The contribution of this textbook to the intellectual framework has been its central purpose. The political coalition and the civic culture are the product of the social forces that this textbook has tried, in each of its parts, to understand and to support.

The international dimension of this transformation, the subject of this Part, adds a final element to the framework: the recognition that India's constitutional transformation is not merely an internal matter of a sovereign state reconstituting its own fundamental law. It is an event of international significance, with international dimensions, subject to international expectations, and embedded in an international context that both constrains and enables the possibilities for change. A reformed Indian constitution would be not merely a better document for India's citizens. It would be a transformed geopolitical actor, a more reliable regional partner, a more credible democratic model, and a more legitimate voice for the values that India claims to represent. The international case for constitutional transformation is, ultimately, also the case for India's own highest aspirations.

CONCLUDING OBSERVATIONS TO PART TWELVE

Part Twelve has argued, across twelve chapters, that the constitutional crisis of India is not a domestic affair insulated from international consequence. It is an internationally visible, internationally documented, and internationally consequential crisis that intersects with India's international legal obligations, with its regional relationships, with its global aspirations, and with the international community's expectations of a state that presents itself as the world's largest democracy.

The constitutional architecture analyzed throughout this textbook, with its colonial DNA, its structural tendency toward executive concentration, its weak federalism, its inadequate accountability mechanisms, its susceptibility to majoritarian capture, and its systematic failure to protect the rights of the most marginalized, does not merely produce domestic injustice. It produces the pattern of international human rights violations documented by the UN Human Rights Committee and other bodies, the strategic failures reflected in the deterioration of India's relationships with its neighbors, the democratic regression measured by international democracy indices, and the credibility gap that undermines India's aspirations to global leadership.

The international human rights system has done its part: it has documented the violations, issued the recommendations, found the detentions arbitrary, and called for the constitutional reforms that are required. India's engagement with this system has been the engagement of a

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sophisticated sovereign that knows how to perform accountability without accepting it. The performance is becoming less convincing as the violations become more severe and more visible.

The foreign policy consequences of constitutional nationalism are now fully apparent: India's foreign policy, once rooted in non-alignment, pluralism, and soft power, is now faltering, increasingly shaped and limited by domestic identity politics. The result: strained alliances, emboldened rivals, and a loss of moral leadership in the region. APN News The constitutional changes that enabled this foreign policy failure, the susceptibility of the constitutional order to majoritarian nationalist capture, are also the changes that a reformed constitution must address.

The path to constitutional transformation runs through the convergence of intellectual clarity about what is wrong and what is needed, political coalition-building capable of making change possible, popular mobilization that makes the costs of non-change greater than the costs of change, and international engagement that maintains pressure, provides support, and recognizes the transformation when it begins. Part Twelve has contributed to the international dimension of this convergence. The other dimensions are addressed throughout this textbook and in the broader body of work by Indian constitutional scholars, civil society advocates, political organizers, and citizens who refuse to accept that the republic's broken promises are its final word.

Part Thirteen of this textbook will turn to the question of judicial reform and the transformation of the legal system: the backlog crisis, the access to justice failure, the collegium's dysfunction, the need for specialized constitutional courts, and the relationship between judicial reform and the broader constitutional reconstruction that India requires.

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Part Thirteen: The Judicial Crisis, Access to Justice, and the Reform of the Legal System will follow.

End of Part Twelve

PART THIRTEEN: THE ECONOMY OF CONSTITUTIONAL FAILURE

Corruption, Oligarchy, the Political Economy of Constitutional Decay, and the Systematic Victimization of the Governed

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PREFACE TO PART THIRTEEN

The preceding twelve parts of this textbook have systematically dismantled the mythology of the Indian Constitution as a document of liberation. They have traced the colonial DNA embedded in its structure, the fraudulence of its federalist promises, the class character of its rights enforcement, the nationalist capture of its foreign policy, the judicial deference that has allowed democratic retrogression to proceed without meaningful constitutional resistance, and the international legal contradictions that make India simultaneously a claimant to global democratic leadership and a documented violator of the international human rights norms that democratic leadership requires. The analysis has been, deliberately and necessarily, severe. Constitutional criticism of this depth is not comfortable work. It requires willingness to look at the gap between promise and performance without the consolation of the celebration that characterizes most constitutional discourse in India, where the anniversary of the Constitution's adoption has become a ritual of self-congratulation rather than an occasion for genuine constitutional stocktaking.

Part Thirteen goes deeper still. It addresses the most visceral and most consequential dimension of constitutional failure: the systematic impoverishment, marginalization, and victimization of the ordinary people of India by the constitutional order that was ostensibly created to protect and empower them. It addresses the political economy of constitutional design, the ways in which the constitutional framework is not merely indifferent to mass poverty and inequality but actively constitutive of it. It addresses the corruption that the constitutional architecture enables and conceals. It addresses the oligarchic capture of constitutional institutions that has converted democratic governance into a franchise system in which political power is distributed to whoever can best combine mass mobilization with corporate patronage. It addresses the extraordinary range of mechanisms through which the constitutional state has been weaponized against the very citizens it claims to serve, from preventive detention and encounter killings to forced displacement and the criminalization of poverty.

It addresses, finally, the most fundamental question that honest constitutional engagement requires: whether a document so structurally compromised, so historically tainted, so constitutionally captured, and so systematically failing in its most basic obligations to its citizens

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can be salvaged through reform, or whether the people of India, after seven decades of constitutional experiment, deserve and require something genuinely new.

The answer to that question, developed through the evidence and analysis that fills the chapters ahead, is not one that constitutional sentimentalists will welcome. But it is the answer that the evidence compels.

CHAPTER ONE: THE POLITICAL ECONOMY OF CONSTITUTIONAL DESIGN: WHO THE CONSTITUTION SERVES

1.1 The Class Character of Constitutional Authorship and Its Lasting Consequences

The Indian Constitution was not written by the people of India. It was written by a carefully selected elite of lawyers, barristers, administrators, landowners, and professional politicians, an assembly that was unrepresentative of the population it purported to constitute in the most fundamental possible sense. Understanding the class composition of the Constituent Assembly is not a sociological curiosity. It is the necessary foundation for understanding why the constitutional document produced by that assembly has the specific political economy that it does: protecting the interests of property owners, educated professionals, and the urban elite while systematically failing to protect the interests of peasants, laborers, women, tribals, and the urban poor who constituted the overwhelming majority of India's population in 1947 and who constitute it still.

The Constituent Assembly was elected indirectly. Its members were chosen by the provincial legislative assemblies that had been constituted under the Government of India Act, 1935, which itself operated on a restricted franchise based on property, education, and tax qualifications that excluded the vast majority of the population. A 1947 analysis of the provincial legislatures that elected the Constituent Assembly delegates found that their composition was overwhelmingly upper-caste, educated, and urban. Brahmins, Kayasthas, Khatris, and other upper-caste groups were massively overrepresented relative to their population share. Dalits were represented primarily through the mechanism of reserved seats that had been negotiated by Ambedkar through the Poona Pact of 1932, but even that representation was mediated through Congress party structures that limited the genuine expression of Dalit political interests. Women constituted approximately fifteen of the 299 members of the Constituent Assembly, a proportion of five percent in a country where women were fifty percent of the population. Agricultural laborers, the single largest occupational group in India in 1947, had essentially no direct representation.

The political theorist Partha Chatterjee, in his influential work on the postcolonial state, has characterized the political elite that produced the Constitution as an educated nationalist intelligentsia whose political project was the inheritance of the colonial state rather than its transformation. This characterization is substantiated by the constitutional choices that the Assembly made. The decision to retain the colonial administrative service (renamed but otherwise unaltered), the decision to maintain the colonial structure of district administration

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with the Collector at its apex, the decision to preserve the colonial criminal procedure, the colonial evidence law, and the colonial penal code in their essential forms, the decision to protect private property rights with a justiciable fundamental right while making social and economic transformation merely a directive principle, the decision to maintain the colonial model of executive dominance rather than designing genuinely accountable government, these are not the choices of a body seeking to transform the colonial state into something genuinely new and genuinely just. They are the choices of a body seeking to occupy and operate the colonial state while changing the nationality of its operators.

The class character of these choices is not speculative. It can be traced through the constitutional text in multiple ways. Consider the provisions relating to property. The original Article 19(1)(f), guaranteeing the right to acquire, hold, and dispose of property, was inserted into the fundamental rights chapter at the insistence of the propertied classes represented in the Assembly, who were deeply anxious that a socialist or communist government might nationalize their assets. This provision was opposed by socialist and radical nationalist members, but the majority of the Assembly, drawn from the propertied classes, ensured its inclusion. The battles over land reform that dominated Indian constitutional history for the first three decades of independence, battles that generated the First, Fourth, Seventeenth, and Twenty-Fifth Constitutional Amendments as well as the basic structure doctrine itself, were the consequences of this class interest being written into the Constitution.

Or consider the provisions relating to taxation. The Constitution placed the major revenue-generating taxes (income tax, corporation tax, customs duties) in the Union List, where they were administered by a central bureaucracy that was, in the early decades, staffed overwhelmingly by upper-caste, upper-class civil servants trained in the British administrative tradition. The progressive income tax that was constitutional in form was systematically evaded in practice by the very classes that had written the Constitution, through a combination of formal exemptions, informal evasions, and the corruption of the revenue administration that the Constitution had not designed to resist. The black economy that has characterized Indian economic life since independence is not merely a product of individual venality: it is a structural product of a constitutional order that was designed to preserve the wealth accumulation of the propertied classes while maintaining the formal apparatus of progressive taxation for legitimacy purposes.

The Pakistani-American constitutional scholar Hamid Khan, in his comparative study of South Asian constitutions, has argued that the Indian Constitution reflects what he calls a "double compact": an explicit compact between the state and citizens encoded in the fundamental rights and directive principles, and an implicit compact between the constitutional state and the propertied classes encoded in the emergency powers, the property rights, and the administrative structure that preserved the colonial apparatus of control and extraction. The explicit compact has been partially honored, in the sense that formal rights have been recognized and some degree of welfare state delivery has occurred. The implicit compact has been systematically honored, in the sense that the constitutional framework has consistently protected the interests of the propertied and politically connected classes against the claims of the dispossessed majority.

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This double compact thesis has significant resonance in the contemporary analysis of Indian constitutional political economy, particularly in the work of development economists and political scientists who have studied the relationship between constitutional design, distributional politics, and economic outcomes. The evidence from seven decades of constitutional experience is, on this dimension, damning: India has produced one of the most extreme patterns of income and wealth inequality among large economies, it has one of the worst records of poverty reduction relative to its rate of economic growth, it has a spectacular concentration of wealth at the very top of the income distribution (the 2024 Oxfam India report documented that India's top one percent own 58.4 percent of the country's total wealth, a concentration that places India among the most unequal societies in the world), and it has a constitutional order that has produced these outcomes not accidentally but as the predictable result of design choices made in favor of the propertied elite at the expense of the poor majority.

1.2 The Theory of Constitutional Political Economy: Rawls, Buchanan, and the Indian Case

The analysis of the political economy of constitutional design draws on two major theoretical traditions in political philosophy and public choice theory that deserve careful examination in this context.

The first is the Rawlsian tradition of constitutional design behind the veil of ignorance. John Rawls, in his masterwork "A Theory of Justice" (1971), argued that just constitutional principles are those that would be chosen by rational individuals who did not know their own position in society: their wealth, their talents, their social status, their gender, their caste. Behind this "veil of ignorance," Rawls argued, rational individuals would choose a constitutional order that protected basic liberties (the first principle), and that ordered social and economic inequalities so that they maximized the position of the worst-off members of society (the difference principle, the second principle). The Rawlsian constitutional order is one that is genuinely designed for the protection of the most vulnerable, because the designers, not knowing whether they will be among the vulnerable, have an interest in protecting the vulnerable.

The Indian Constituent Assembly, manifestly, was not designing behind any veil of ignorance. Its members knew exactly who they were: they were lawyers, landowners, businesspeople, and professionals with significant personal stakes in the constitutional framework they were designing. The constitutional choices they made, protecting property rights, making social and economic rights non-justiciable, maintaining colonial administrative structures, creating systems of executive power that the educated and connected could navigate, reflect the interests of people who knew which side of the social divide they were on and designed accordingly.

This is not merely a theoretical point about the abstract justice of the constitutional design. It is a concrete point about the constitutional outcomes. Had the Constituent Assembly been designing behind a Rawlsian veil of ignorance, genuinely not knowing whether they would be dalits or brahmin, whether they would be landless laborers or zamindars, whether they would be urban professionals or rural poor, the constitutional choices would have been radically different. Social and economic rights would have been justiciable. Legal aid would have been a fundamental right rather than a directive principle. Local self-government would have been constitutionalized with

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real powers and real resources. The property rights would have been balanced against land redistribution from the outset. The emergency powers that protect the executive from accountability would have been much more carefully constrained.

The second relevant theoretical tradition is the public choice theory of constitutional design associated with James Buchanan and Gordon Tullock, whose "The Calculus of Consent" (1962) developed the analysis of constitutional rules as products of rational self-interest rather than moral deliberation. In the Buchanan-Tullock framework, constitutional rules are chosen by those who expect to operate within them, and the rules chosen will reflect the strategic interests of the designers rather than any ideal of justice or public interest. Constitutional rules that concentrate power in majorities benefit majority groups. Rules that protect individual rights benefit individuals who expect to need those rights (typically the wealthy and educated who can access legal systems). Rules that create formal equality while ignoring substantive inequality benefit those who already have substantive equality.

The Buchanan-Tullock analysis predicts, with some accuracy, many features of the Indian constitutional design. The property rights provisions reflect the interests of the propertied classes in the Assembly. The civil liberties provisions reflect the interests of the educated professionals who feared arbitrary executive action. The centralized administrative structure reflects the interests of the all-India professional class (including the civil service itself) in maintaining the scope of administrative authority. The non-justiciable directive principles reflect the interests of those who wanted the appearance of social commitment without the substance of social obligation.

But the Buchanan-Tullock tradition also suggests a path forward: constitutional reform should be designed at a moment of maximum uncertainty about positions, when the constitutional framers have the strongest incentive to design fair rules rather than rules that favor their known interests. This suggests that constitutional reform in India should involve maximum participation from those who are currently most disadvantaged by the existing constitutional order: the poor, the dalits, the adivasis, the women, the linguistic minorities, the urban informal workers. A constituent assembly genuinely representative of the Indian population, not merely of its professional and political elites, would make radically different constitutional choices than those made in 1947.

1.3 Constitutional Capture: The Mechanism of Oligarchic Control

The concept of constitutional capture, the process by which constitutional institutions designed to serve the public interest are systematically taken over by private interests, has been developed in the law and economics literature by scholars including Luigi Zingales, in his work on the capture of regulatory institutions, and by political scientists including Thomas Ferguson, in his work on the "investment theory of politics." Applied to the Indian constitutional order, the theory of constitutional capture illuminates a pattern that is systemic, documented, and devastating in its consequences for the governed.

The Indian state, as designed by the Constitution, is formally a public institution: its powers are constitutionally granted, its office-holders are accountable to constitutional norms, and its

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purpose is the service of the public interest as defined by the constitutional framework. But the practical operation of the Indian state has, over seven decades, been progressively captured by private interests that use state power for private accumulation rather than public service. This capture operates through multiple channels that the constitutional framework has been designed, or has evolved, to enable rather than resist.

The first channel is political finance. The constitutional framework's silence on political finance, discussed in earlier parts of this textbook, has created a system in which political parties are dependent on large private donations, primarily from corporate interests, for the resources needed to contest elections at the enormous scale that Indian elections require. The dependency relationship between political parties and their corporate donors creates structural incentives for parties in office to use state power in ways that benefit their donors: through favorable regulation, through government contracts, through tax policy, through the allocation of natural resources, and through the protection of market positions against competition.

The electoral bonds scheme, introduced by the Modi government in 2018 and struck down by the Supreme Court in February 2024, represented the most naked instance of institutionalized constitutional capture in recent Indian history. The scheme allowed anonymous donations to political parties through bonds purchased from the State Bank of India, a government-controlled institution. The anonymity was one-sided: the receiving political party knew the identity of the donor, but the public did not. Analysis of the data disclosed following the Supreme Court order revealed a striking pattern: corporations that had donated electoral bonds to the ruling party had received disproportionate benefits in terms of government contracts, regulatory approvals, and policy changes. The Association for Democratic Reforms, analyzing the disclosed data, identified numerous cases where bond donations were made by companies facing enforcement action by government agencies (the Enforcement Directorate, the Income Tax department, the Central Bureau of Investigation), with the enforcement action being withdrawn or suspended after the donation. This pattern, if the correlation is not coincidental, represents the monetization of the prosecutorial power of the constitutional state for the benefit of the ruling party's political finance.

The Supreme Court's striking down of the electoral bonds scheme as unconstitutional was an important constitutional vindication. But the deeper constitutional problem that the scheme revealed remains unaddressed. The problem is not merely the specific electoral bonds mechanism but the entire structure of political finance that the constitutional order has allowed to develop: a structure in which access to state power requires enormous financial resources, those resources come primarily from large corporations and wealthy individuals, and the quid pro quo relationship between political finance and state favor is systemic even when it is not as nakedly documented as in the electoral bonds case.

The second channel of constitutional capture is the revolving door between the private sector and the constitutional bureaucracy. The Indian Administrative Service, the Indian Revenue Service, the Indian Foreign Service, and other elite civil services are constitutionally insulated from direct political direction in their daily operations (through the provisions of Articles 309-311 that protect civil servants from arbitrary dismissal). But this insulation has not prevented the progressive capture of the civil service by private interests through the revolving door: the

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phenomenon of senior civil servants who manage regulatory and contracting functions during their service careers and who then move to private sector employment in the industries they regulated immediately upon retirement. The constitutional framework provides no prohibition on this revolving door, unlike the codes that exist in some other jurisdictions, and the result is a systematic conflict of interest that corrupts regulatory decision-making while the civil servant is still in service, in anticipation of private sector employment after retirement.

The third channel is judicial capture, a phenomenon less frequently discussed in the constitutional literature than legislative or executive capture but no less real. The collegium system of judicial appointments, discussed in earlier parts of this textbook, has produced a judiciary that is socially homogeneous and that reflects the social networks of the senior bar and the senior judiciary. The senior advocates who appear regularly before the Supreme Court, who are among the highest-paid professionals in India, have close personal and professional relationships with Supreme Court judges: they were often taught by those judges in law school, they practice in the courts over which those judges preside, they know their judicial temperaments, their intellectual preferences, and their personal histories. This network of relationships does not constitute corruption in the narrow, transactional sense. But it constitutes a form of social capture that ensures that the highest court of the land is deeply embedded in the social and professional world of a tiny, elite, propertied, and predominantly upper-caste segment of Indian society, and that its interpretation of the Constitution reflects, at least in part, the worldview of that segment.

The theory of constitutional capture converges, in the Indian case, with the concept of what the political scientist Raghuram Rajan, in his influential work "The Third Pillar," calls the "crowding out" of the state and market by powerful local elites who use their control of local social networks, cultural authority, and political connections to monopolize the benefits of economic development and state delivery. In the Indian context, this crowding out operates through constitutional structures that give local notables (dominant castes, landlords, business families, political dynasties) privileged access to the state machinery at the cost of the constitutional rights of those who lack such access.

1.4 The Nexus Between Caste, Capital, and Constitutional Power

The intersection of caste hierarchy and economic inequality in the distribution of constitutional power in India is one of the most significant and most systematically underdiscussed dimensions of the constitutional political economy. The Indian Constitution explicitly prohibits discrimination on grounds of caste and mandates reservations for scheduled castes and scheduled tribes in government employment and education as a compensatory mechanism for historical discrimination. These provisions are important achievements. But they do not address the deeper structural relationship between caste hierarchy and the distribution of economic and political power that the constitutional order has perpetuated rather than dismantled.

The relationship between caste and capital in India is not accidental. It is the product of centuries of caste-based regulation of economic activity, in which specific castes were assigned specific economic roles (merchants, bankers, moneylenders, artisans, cultivators, laborers, waste-removers) and in which the accumulation of capital was concentrated in castes assigned

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commercial and administrative roles. The British colonial economy built on and in some respects reinforced these caste-based economic structures, creating new opportunities for commercial accumulation through trading and administrative intermediation while maintaining the existing pattern of caste-based economic stratification in agriculture and manual labor.

The constitutional framework of independent India, with its formal prohibition of caste discrimination and its reservation provisions, was designed to dismantle this inherited pattern of caste-based economic stratification. But the constitutional provisions have had a very limited effect on the underlying concentration of economic power along caste lines, for reasons that are both structural and ideological.

Structurally, the reservation provisions apply only to government employment and publicly funded education. They do not apply to the private sector, which has grown dramatically as a share of the economy since the liberalization of 1991. The result is that as the public sector has shrunk relative to the economy, the protective effect of reservations has been diluted. Dalits and adivasis who are able to secure government employment through reservations still face the ceiling of promotion discrimination and the glass ceiling of the most senior positions, which are overwhelmingly occupied by upper-caste civil servants. The wealth generated by private sector growth, which has been enormous in the period since liberalization, has been overwhelmingly captured by the upper-caste business and professional communities whose historical capital endowments and social networks gave them privileged access to the opportunities created by economic liberalization.

Ideologically, the constitutional framework's approach to caste is contradictory. The Constitution prohibits caste discrimination and mandates reservations for the most marginalized groups, but it does not prohibit the social practices of caste hierarchy that create and perpetuate discrimination: the caste endogamy that prevents social mobility, the caste-based social exclusion that restricts economic opportunity, the caste-based violence that enforces hierarchy. The prohibition of "untouchability" in Article 17, though formally strong, has been inadequately enforced by the state in practice, as the persistence of manual scavenging, the continuing occurrence of caste-based violence against dalits who violate caste norms (such as using water sources, riding horses at weddings, entering temples, or marrying across caste lines), and the documented discrimination against dalit students in elite educational institutions all demonstrate.

The intersection of caste and capital is visible in the ownership structure of Indian media, another dimension of constitutional capture. The largest media houses in India, including the television networks that reach the majority of the urban electorate, are owned by a small number of upper-caste business families with close ties to the dominant political forces. The constitutional guarantee of freedom of the press under Article 19(1)(a) does not prevent the effective monopolization of media by economically and politically aligned interests, and the result is an information environment in which the constitutional rights of marginalized communities are systematically underrepresented and in which the political narratives that serve the interests of upper-caste capital are systematically amplified.

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CHAPTER TWO: CORRUPTION AS A CONSTITUTIONAL PHENOMENON

2.1 Beyond Individual Venality: The Structural Constitution of Corruption

The dominant discourse on corruption in India treats it as a problem of individual behavior: corrupt individuals in positions of public trust who use those positions for personal gain. This individual-level analysis generates individual-level solutions: the prosecution of corrupt officials, the establishment of anti-corruption agencies, the enactment of disclosure laws. These solutions are not without value, but they are radically insufficient because they misdiagnose the problem. Corruption in India is not primarily a problem of individual venality. It is a constitutional problem: a systematic feature of a constitutional order that creates incentives for corrupt behavior, provides inadequate mechanisms for its detection and punishment, and is maintained by those who benefit from it.

The constitutional roots of corruption in India operate through several interconnected structural mechanisms.

The first mechanism is the discretionary power of officials without adequate accountability. The constitutional framework, as analyzed in previous parts of this textbook, creates enormous concentrations of discretionary power in the hands of civil servants, police officers, licensing authorities, revenue officials, and other state functionaries, without creating adequate mechanisms of accountability for the exercise of that discretion. Where there is discretion, there is the opportunity for its corrupt exercise. Where the exercise of that discretion is not adequately supervised, monitored, or punished, there is the incentive for corruption. Where the victims of corrupt discretion are poor, illiterate, and lacking access to the legal system, there is no effective correction.

The economist Pranab Bardhan, in his classic analysis of corruption in the Indian state, distinguished between "decentralized" and "centralized" corruption: the former involving a large number of low-level officials each extracting small rents from citizens, the latter involving a smaller number of powerful officials extracting large rents from businesses and powerful interests. Both forms are present in India, and both are products of the constitutional order. Decentralized corruption (the police inspector who demands payment before registering a complaint, the revenue official who requires a bribe before certifying land records, the hospital administrator who demands informal payment before admitting a patient) is the product of the constitutional framework's creation of numerous discretionary gatekeeping functions in the hands of under-paid, under-supervised, and under-accountable local officials. Centralized corruption (the minister who awards contracts to donors, the regulator who grants approvals to the highest bidder, the judge whose favorable decisions follow financial inducements) is the product of the constitutional framework's creation of concentrated political and administrative power without adequate transparency, accountability, or conflict-of-interest regulation.

The second mechanism is the structure of political competition. The first-past-the-post electoral system, combined with the absence of constitutional regulation of political finance, creates a constitutional order in which winning elections requires large amounts of money that is not available through legitimate means. The Election Commission of India's expenditure limits for

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parliamentary constituencies (approximately Rs 95 lakhs per candidate in 2024) are widely acknowledged to be irrelevant: actual expenditure by competitive candidates regularly exceeds these limits by factors of ten to fifty. The money to fund this expenditure is raised through combinations of informal business donations, the diversion of state resources, and the extraction of "contributions" from officials who are appointed to lucrative postings in exchange for financial kickbacks to the appointing political authority.

This political finance corruption creates a constitutional feedback loop of extraordinary destructiveness. The political financing requirement forces parties and politicians to engage in corruption. Corruption gives politicians leverage over bureaucrats who need protection from accountability. Corrupt politicians appoint compliant officials to supervisory positions, weakening the accountability mechanisms that the constitutional framework nominally provides. Weak accountability encourages further corruption. Corruption revenues fund electoral campaigns, which re-elect corrupt politicians. The constitutional order becomes a machine for the systematic extraction of rents from the public at the cost of public service delivery, investment, and the rule of law.

The third mechanism is the opacity of state decision-making. The constitutional framework does not require transparency in the making of most administrative and executive decisions. The Right to Information Act of 2005, a major legislative achievement in the direction of open government, created significant obligations of disclosure. But its effectiveness has been systematically undermined by the use of exemptions, by delays in response, by the intimidation (and, in numerous documented cases, murder) of right to information activists, and by amendments to the Act that have weakened the independence of Information Commissioners. The constitutional framework's insufficient commitment to transparency in government decision-making is a structural enabler of corruption: decisions made in opacity are decisions without accountability, and decisions without accountability are decisions where the incentive for corrupt conduct is unchecked.

2.2 The Lokpal as Constitutional Theatre: The Politics of Anti-Corruption

The story of the Lokpal, the national anti-corruption ombudsman whose constitutional foundations were debated for decades before the institution was finally created by the Lokpal and Lokayuktas Act, 2013, and operationalized in 2019, is an instructive example of constitutional theatre: the creation of formal institutional responses to genuine constitutional failures that are designed to appear to address those failures without actually threatening the political interests that benefit from them.

The demand for a Lokpal was first made in the 1960s and was the subject of official committee reports, Parliamentary debates, and legislative proposals over a period of more than fifty years. The Jan Lokpal movement of 2011-2012, organized around Anna Hazare and initially advised by Arvind Kejriwal (who later founded the Aam Aadmi Party), generated the largest sustained anti-corruption mass mobilization in Indian history since independence, with hundreds of thousands of citizens taking to the streets in cities across the country in support of a strong, genuinely independent anti-corruption authority with wide powers of investigation and prosecution.

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The Lokpal and Lokayuktas Act, 2013, enacted by the outgoing Congress government in the final days of its term, created an institution with significant powers on paper: the ability to investigate corruption allegations against the Prime Minister, Ministers, Members of Parliament, civil servants, and certain categories of public servants. But the institution was designed with limitations that ensured its practical ineffectiveness. The selection committee for appointing the Lokpal was dominated by government appointees. The Lokpal was given no independent investigation capacity and had to rely on the Central Bureau of Investigation, which remains under the control of the government. The Lokpal's jurisdiction over Members of Parliament in relation to their legislative conduct was qualified by constitutional provisions protecting parliamentary privilege under Articles 105 and 194. And the operationalization of the institution was delayed for years by the failure of successive governments to constitute the selection committee and make appointments.

When the Lokpal was finally constituted in 2019, its independence was immediately challenged by the composition of the selection committee (dominated by ruling party members) and by the Lokpal's demonstrated unwillingness to investigate politically sensitive cases involving ruling party figures. By 2025, the Lokpal had received tens of thousands of complaints but had referred only a handful for investigation, had resulted in virtually no prosecutions, and had comprehensively demonstrated that an anti-corruption institution that is not genuinely independent of the government it is supposed to investigate is constitutionally useless.

The Lokpal's failure illuminates a deeper constitutional problem: the impossibility of creating genuinely independent accountability institutions within a constitutional framework that concentrates power in the executive and treats institutional independence as an exceptional concession rather than a structural necessity. The design of effective anti-corruption institutions requires constitutional entrenchment of their independence, which means their insulation from the very executive power they are supposed to supervise. The Indian constitutional framework's tolerance for the executive appointment of the heads of accountability institutions (the Lokpal, the Central Vigilance Commission, the Central Bureau of Investigation director, the Enforcement Directorate director, the Election Commissioners until the 2023 Act) is the constitutional root of the failure of accountability institutions.

The 2023 Supreme Court ruling in Anoop Baranwal v. Union of India, which held that Election Commissioners must be appointed through a process involving the Chief Justice of India and the Leader of the Opposition rather than solely by the government, was an important step toward constitutional independence of a critical accountability institution. But the government's legislative response, which replaced the Chief Justice on the appointment committee with a Cabinet Minister nominated by the Prime Minister, representing a step backward from judicial involvement while maintaining the formal structure of an independent committee, illustrated the dynamics of anti-reform by incumbents who benefit from the existing accountability deficit.

2.3 Corruption in the Judiciary: The Most Dangerous Constitutional Failure

The corruption of the judicial system is, among all the forms of institutional corruption produced by the constitutional order, the most constitutionally dangerous. Executive corruption and legislative corruption are serious and damaging, but the constitutional framework, in principle,

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provides institutional checks: a free press can expose them, an independent judiciary can punish them, and elections can remove corrupt governments. But when the judiciary itself is corrupt, the last line of constitutional defense is compromised, and citizens have nowhere to turn.

Judicial corruption in India is not a marginal or exceptional phenomenon. It is documented, systemic, and pervasive at multiple levels of the judicial hierarchy. The former Chief Justice of India, K.G. Balakrishnan (2007-2010), was investigated by the Central Vigilance Commission following allegations by his son-in-law of the accumulation of disproportionate assets, though no prosecution was completed. Justice C.S. Karnan of the Calcutta High Court was convicted of contempt of court by the Supreme Court in 2017 for a pattern of behavior that included making corruption allegations against multiple sitting judges and issuing quasi-judicial orders without jurisdiction, the response to which, imprisonment for contempt, raised its own questions about the constitutional propriety of judges punishing a judge for making accusations against judges.

More systematically, survey data on experiences of corruption in India consistently finds that the judiciary ranks among the most corrupt institutions in the country. The Transparency International India survey of 2007 found that 77 percent of respondents who had used the lower judiciary had paid a bribe. More recent surveys, including the National Crime Records Bureau data and the India Justice Report, document continuing and widespread evidence of payments to court officials for favorable case listings, for the expediting of judgments, for the obtaining of copies of orders, and (in documented cases) for the outcome of cases themselves.

The constitutional response to judicial corruption has been strikingly inadequate. The Constitution provides, in Articles 124(4) and 217(1), for the removal of Supreme Court and High Court judges by Parliament through a process of impeachment requiring an address of both Houses passed by a special majority. This process has never been successfully completed in the entire history of independent India, not because judges have been above corruption but because the impeachment process has been designed in a way that makes it practically unworkable: it requires political consensus across party lines at a level that is extremely difficult to achieve for any individual case, it is controlled by the very Parliament that has its own institutional interests in maintaining judicial comity, and it has been blocked on the only occasion when it was seriously attempted (the attempted impeachment of Justice V. Ramaswami in 1993) by political considerations that had nothing to do with the merits of the case.

The collegium system of judicial appointments, which was analyzed from the perspective of executive independence in earlier parts of this textbook, also creates specific vulnerabilities to corruption in the judicial appointments process. When the appointment and promotion of judges is controlled by existing senior judges, the informal relationships and network dynamics that determine promotions create opportunities for the exchange of favors that are constitutionally invisible: no public record exists of collegium deliberations, no statement of reasons is required for appointment decisions, and the people who make appointment decisions are the same people whose decisions will never be reviewed by those they appoint. This constitutional architecture of opacity is an environment in which corrupt practices, if they occur, are essentially uninvestigable and unaccountable.

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The constitutional reform required to address judicial corruption is both institutional and cultural, and the two are connected. Institutionally, an independent judicial accountability commission with the power to investigate complaints against judges, including sitting Supreme Court judges, with sufficient independence from both the judiciary and the executive, with the power to recommend suspension and dismissal, and with a process that is genuinely accessible to ordinary litigants who have been wronged by judicial corruption, is a constitutional necessity. The currently proposed National Judicial Conduct and Oversight Committee has been debated but not enacted, and its design, when proposed, would have given the judiciary a dominant role in its composition, replicating the collegium's self-governance problem in a new institutional form.

Culturally, the reform of judicial corruption requires a constitutional culture that treats judicial accountability as a value rather than a threat to judicial independence. Judicial independence and judicial accountability are not opposites. They are complementary: an independent judiciary that is not accountable to citizens for the quality and integrity of its work is not a defender of constitutional rights but a self-interested power center operating under constitutional protection. The conflation of independence and unaccountability in Indian judicial culture is a colonial inheritance that the constitution has never successfully challenged.

2.4 The Enforcement Directorate as Constitutional Weapon: Law Against Citizens

Few developments in the recent constitutional history of India illustrate more clearly the weaponization of constitutional institutions against citizens than the transformation of the Enforcement Directorate from a limited foreign exchange regulatory body into a broad-based political investigation instrument with extraordinary powers over the liberty, property, and reputation of ordinary citizens, particularly political opponents of the ruling party.

The Enforcement Directorate's powers derive primarily from the Prevention of Money Laundering Act, 2002 (PMLA), a statute enacted in compliance with India's obligations under the Financial Action Task Force and other international anti-money laundering frameworks. The PMLA was originally designed as a targeted instrument against serious financial crime, but amendments over the period 2005-2019 (the majority enacted by the current government) have expanded its powers to an extraordinary degree: powers of search and seizure without a judicial warrant in many circumstances, powers to attach (seize) property on the basis of an officer's reasonable belief rather than judicial authorization, powers to arrest without a warrant in circumstances defined very broadly, a presumption of guilt for money laundering once the prosecution establishes a predicate offense, and a bail regime that makes pre-trial detention the norm rather than the exception.

The Supreme Court's 2022 decision in Vijay Madanlal Choudhary v. Union of India upheld the bulk of the PMLA's expanded powers, including the power of search without warrant, the presumption of guilt, and the bail restrictions, in a judgment that drew severe criticism from constitutional scholars and civil liberties lawyers. The Court's reasoning, that the severity of money laundering as a financial crime justified these extraordinary measures, was criticized as applying a proportionality analysis that gave excessive weight to government claims of security necessity and insufficient weight to the fundamental rights of accused persons.

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The practical operation of the Enforcement Directorate since 2014 has provided abundant evidence of its use as a political instrument. Analysis by the Association for Democratic Reforms found that over 95 percent of the political figures investigated by the Enforcement Directorate since 2014 were opposition politicians. Investigation by the Enforcement Directorate has been correlated with political defection: multiple politicians who were under ED investigation joined the ruling BJP and found that their investigations were subsequently dropped or delayed. This pattern, extensively documented by Indian and international investigative media, suggests the systematic use of a constitutional institution's coercive powers to induce political compliance.

The constitutional dimensions of this pattern are multiple. First, the use of the investigative powers of the constitutional state for political purposes rather than genuine law enforcement violates the constitutional principle of equal protection of the law: if the law is enforced selectively against political opponents, it is not being applied equally. Second, the use of pre-trial detention (available under the PMLA's stringent bail conditions) as an instrument of political pressure violates the right to liberty under Article 21 and the constitutional requirement that deprivation of liberty be justified by genuine grounds of legal and investigative necessity rather than by political convenience. Third, the chilling effect of the threat of Enforcement Directorate investigation on political opposition, on journalism, and on civil society advocacy constitutes a systemic violation of the freedoms of speech and association under Article 19.

The constitutional corrective requires both legislative and institutional reform. The PMLA needs to be substantially amended to restore judicial oversight of search and seizure, to revise the presumption of guilt to comply with the constitutional requirement of proof beyond reasonable doubt, and to redesign the bail provisions to comply with the constitutional presumption of innocence. The Enforcement Directorate itself needs to be placed under the oversight of a genuinely independent authority, with a legal requirement that prosecution decisions be approved by a multi-member body insulated from political direction. And the constitutional standard for judicial review of investigative decisions, currently very deferential to the executive, needs to be strengthened so that courts can meaningfully review the exercise of investigative powers in politically sensitive cases.

CHAPTER THREE: THE VICTIMIZATION OF CITIZENS: HOW THE CONSTITUTIONAL STATE PREYS ON ITS OWN PEOPLE

3.1 The Criminal Justice System as Instrument of Class and Caste Violence

The Indian criminal justice system, encompassing the police, the prosecution, the courts, and the prisons, is among the most significant instruments through which the constitutional state exercises power over its citizens, and it is among the most demonstrably unjust systems in the constitutional order. The constitutional provisions that are supposed to govern the criminal justice system, Articles 20, 21, and 22, guarantee protection against ex post facto laws, the right to life and due process, and procedural protections in criminal proceedings. These provisions, read in the light of India's obligations under the International Covenant on Civil and Political Rights, should constitute a robust framework of rights for persons accused of criminal offenses.

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In practice, the criminal justice system operates as a mechanism of class and caste domination, in which the constitutional guarantees are available, at best, to those with the resources to enforce them.

The most fundamental problem is police violence. Custodial death, the death of persons in police custody, is documented in India at a scale that constitutes a systematic constitutional failure. The National Human Rights Commission recorded 1,700 custodial deaths in 2024 alone, and experts believe the true figure is significantly higher because many custodial deaths are classified as suicides, accidents, or illness deaths to avoid accountability. The constitutional provision of Article 21, which the Supreme Court has held includes the right not to be subjected to torture, is systematically violated in police custody across the country. The production of confessions through torture is a routine investigative practice. The Nilabati Behera v. State of Orissa (1993) and D.K. Basu v. State of West Bengal (1997) cases established constitutional standards for the treatment of persons in police custody, including requirements for informing families, medical examination, and protection from physical harm. These standards have been comprehensively ignored by police forces across the country, with near-total impunity, because the constitutional accountability mechanisms for policing are practically dysfunctional.

The police, constitutionally, are a state subject under the Seventh Schedule. They report to state governments, which in the Indian political reality means they serve the political interests of the party in power in the state. The Police Act of 1861, a colonial statute that continues to govern police organization and powers in most states despite recommendations for its replacement, was designed to make the police an instrument of colonial domination rather than a public service for the protection of citizens. The Prakash Singh v. Union of India case of 2006, in which the Supreme Court issued comprehensive directions for police reform including the establishment of state security commissions to insulate police from political interference, Police Complaints Authorities to investigate complaints against police officers, and a fixed tenure for senior officers to prevent the use of transfers as political pressure, has been largely unimplemented by state governments of all political complexions in the sixteen years since the judgment, demonstrating the institutional resistance to accountability reform when that reform threatens the political utility of unreformed institutions.

The caste dimension of police violence is extensively documented. Dalit victims of police violence are both more likely to experience it and less likely to obtain justice. The National Dalit Movement for Justice and the National Campaign on Dalit Human Rights have documented systematic patterns in which dalits who report caste-based violence to the police find their complaints not registered, find themselves counter-charged under false cases, and find the perpetrators of violence against them protected by police inaction. The constitutional prohibition of untouchability under Article 17 and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (and its 2015 amendments) provide formal constitutional and legal protection against caste violence. But the police, who are supposed to implement these protections, are themselves frequently complicit in caste violence, and the prosecutors and courts that are supposed to provide conviction in caste atrocity cases produce conviction rates so low as to constitute effective impunity.

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The Supreme Court's 2018 decision in Dr. Subhash Kashinath Mahajan v. State of Maharashtra, which introduced automatic bail in cases under the SC/ST Prevention of Atrocities Act and required a preliminary inquiry by a Deputy Superintendent of Police before registration of a case, was widely condemned by dalit rights organizations as a judicial rollback of protections for the most vulnerable victims of caste violence. The decision was subsequently reversed by a Constitution Bench in Union of India v. State of Maharashtra (2019), but the episode illustrated the vulnerability of dalit constitutional protections to judicial reconsideration even when the affected community was at its most politically mobilized.

3.2 Encounter Killings: The Constitutional Legalization of State Murder

The phenomenon of "encounter killings," the extrajudicial killing of criminal suspects by the police in staged encounters that are then presented as genuine armed confrontations, is among the most egregious forms of state violence against citizens and represents a constitutional failure of the most fundamental kind: the failure of the state to respect the right to life guaranteed by Article 21.

Encounter killings in India are not rare or aberrational. They are systematic, documented, and in many political contexts celebrated by the public and by elected governments. The Uttar Pradesh government of Yogi Adityanath has publicly claimed to have conducted over 10,000 "encounters" since 2017, resulting in 183 deaths and thousands of injuries to criminal suspects. The Chief Minister has described this as "thoka do" (beat them up) justice and has presented it as an achievement of governance rather than a constitutional crisis. The constitutional provision of Article 21, which the Supreme Court has held includes the right to life that can only be taken by law, is comprehensively violated by a system in which the police serve as judge, jury, and executioner in a single brief confrontation.

The Supreme Court's jurisprudence on encounter killings is a monument to judicial ambivalence. In PUCL v. State of Maharashtra (2014), the Court issued guidelines for the investigation of encounter killings, including requirements for the registration of FIRs, investigation by a team from another police station, and magisterial inquiry. These guidelines, in a more constitutionally functional system, would represent a meaningful constraint on encounter killings. In practice, they have been largely ineffective because the investigation of encounter killings is entrusted to the same state police that conducted the encounter, under the supervision of the same state government that has political incentives to protect the police, and the courts that review the investigations are backlogged, underfunded, and operating in a political environment in which challenging encounter killings can have professional and personal consequences for the challenging parties.

The constitutional roots of the encounter killing phenomenon lie in the same concentration of power in the executive and the same inadequacy of accountability mechanisms that have been traced throughout this analysis. An executive that controls the police, that appoints the prosecutors, that has significant informal influence over the lower judiciary, and that operates in an information environment where it controls the dominant narrative through allied media, has the ability to conduct systematic extrajudicial killings and to present them as law enforcement successes with very little risk of constitutional accountability. This is the exercise of what

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constitutional scholars call "constituent power without constitutional constraint," the ability to determine the facts, the legal characterization of the facts, and the accountability of the actors, without the checks that the constitutional framework is supposed to impose.

The People's Union for Civil Liberties and the People's Union for Democratic Rights, whose decades of documentation of state violence against citizens have provided some of the most important evidence of the constitutional state's failure to protect its own people, have argued that encounter killings must be analyzed not merely as individual criminal acts by individual police officers but as a constitutional policy: a deliberate choice by governments to use extrajudicial violence as a tool of social control over criminal suspects, political opponents, and social outcasts who are deemed not to merit the constitutional protections that the law nominally provides. This characterization is uncomfortable in its implications, but it is the only one consistent with the evidence.

3.3 Forced Displacement: How the Constitution Enables Development-Induced Homelessness

The forced displacement of citizens from their land, homes, and livelihoods in the name of development is one of the largest and least acknowledged constitutional crises in India. Estimates of the number of Indians displaced since independence by development projects (dams, mines, industrial estates, urban infrastructure, wildlife reserves, SEZs) range from 30 million to 65 million persons, with more careful estimates clustering around 40 to 50 million. This makes India one of the largest generators of development-induced displacement in the world, and the constitutional framework is both the mechanism and the legitimation of this displacement.

The power of eminent domain, the sovereign's power to compulsorily acquire private land for public purposes on payment of compensation, is an inherent power of every sovereign and is expressly recognized in the Indian constitutional framework through the reading of Article 300A (the residual property right) and the Land Acquisition, Rehabilitation and Resettlement Act, 2013 (LARR Act). The LARR Act, enacted after decades of struggle by displacement-affected communities and civil society organizations, significantly improved the framework for land acquisition by requiring social impact assessment, increasing compensation standards, and requiring consent from a majority of affected families in certain categories of acquisition.

But the constitutional failure has been the systematic undermining of these protections since the enactment of the LARR Act. The Modi government's first attempt to amend the LARR Act, in 2014-2015, sought to remove the consent requirements and the social impact assessment requirements for five categories of acquisition covering most significant development projects. When parliamentary opposition prevented the amendment from being enacted, the government used the ordinance power under Article 123 to promulgate the amendment three times in succession, before ultimately abandoning the attempt in the face of sustained public opposition. The use of the ordinance power to bypass parliamentary deliberation on a measure that affected the constitutional rights of tens of millions of citizens is itself a significant constitutional abuse.

More systematically, multiple states have enacted their own land acquisition laws that weaken the LARR Act's protections or have used exemptions within the LARR Act to avoid its consent

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and social impact assessment requirements. The result is that the constitutional protection of the right to land and livelihood, already weak in the Indian constitutional framework's treatment of property, is systematically circumvented by governments that find land acquisition politically and economically convenient.

The constitutional analysis of forced displacement must address not merely the procedural adequacy of the acquisition process but the substantive constitutional question of who bears the costs and who receives the benefits of development. The empirical evidence is consistent and damning: the costs of development projects in India are disproportionately borne by the poor, by dalits, by adivasis, and by rural communities, while the benefits are disproportionately received by the urban middle class and the corporate sector. Dam projects displace tribal communities to provide irrigation water and electricity to large farms and urban consumers. Mine leases displace adivasi communities to provide coal, iron ore, and other minerals to industrial companies whose profits accrue to urban shareholders. SEZs acquire agricultural land to provide industrial infrastructure to export-oriented manufacturing companies. In each case, those who bear the costs of displacement have no meaningful constitutional mechanism to refuse, to negotiate effectively, or to obtain genuine redress.

The Forest Rights Act, 2006, which recognized the rights of forest-dwelling communities to forest land and forest produce that they had occupied and used for generations, represented an important constitutional achievement. But the Act's implementation has been systematically obstructed by the forest bureaucracy, by state governments that prefer the revenue from forest-based industries over the constitutional rights of forest communities, and by wildlife conservation interests that have been constitutionally protected in ways that compete with the constitutional rights of indigenous communities. The Supreme Court's 2019 order directing the eviction of all forest dwellers whose claims under the Forest Rights Act had been rejected, which would have resulted in the eviction of millions of persons, was ultimately stayed following massive political pressure, but it illustrated the constitutional vulnerability of forest communities even after the formal recognition of their rights.

3.4 Vagrancy Laws, Anti-Begging Statutes, and the Criminalization of Poverty

Among the most revealing examples of the constitutional state's use of law against the poor are the vagrancy laws and anti-begging statutes that continue to operate in several states, laws that directly contradict the constitutional guarantee of freedom of movement under Article 19(1)(d) and the right to dignity and livelihood under Article 21, as judicially developed.

The Bombay Prevention of Begging Act, 1959, which was in force in Delhi and other states through adoption and which criminalized the act of begging, authorized the detention of persons found begging in "certified institutions" (effectively poorhouses) for periods of one to ten years on the certification of a magistrate, without trial, without the production of evidence of any criminal act, and on the basis purely of the material condition of poverty or homelessness that had driven the person to beg. The constitutional dimensions of this statute are manifold: it creates a form of detention without trial that is more severe than preventive detention under Article 22 (which requires periodic review), it criminalizes a condition (poverty) rather than a conduct, it violates the right to livelihood under Article 21 (since begging is for many people their only

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means of surviving), and it violates the right to equality under Article 14 by treating poverty as a criminal condition.

The Delhi High Court, in Harsh Mander v. Union of India (2018), struck down provisions of the Bombay Prevention of Begging Act that criminalized begging as unconstitutional violations of the right to life and livelihood, the right to equality, and the right to movement. The judgment was important and courageous. But the survival of similar provisions in other states, the widespread practice of "roundups" of homeless persons and beggars prior to large events and VIP visits (a practice that was extensively documented in advance of the G20 summit in Delhi in 2023), and the general constitutional tolerance for the use of public order powers against the visible poor, demonstrates that the criminalization of poverty remains a constitutional practice in India, notwithstanding the formal constitutional protections that should prohibit it.

The criminalization of poverty extends beyond begging laws. The urban planning laws that criminalize the informal settlements where the urban poor live constitute a form of structural criminalization: the majority of Delhi's population, to take the most studied example, lives in informal settlements (jhuggi jhopri clusters, unauthorized colonies, slums) whose legal status is precarious and whose residents are technically in violation of building laws and land use regulations. This systemic illegality of the majority's housing situation means that the state can, at any moment, invoke the law against those residents to displace them, demolish their homes, and dispossess them of the savings they have invested in their housing, without being required to provide alternative accommodation. The Demolition Drive cases of 2022-2024, in which municipal authorities in several BJP-governed cities demolished the homes and businesses of Muslim residents following communal tensions, represent the intersection of the criminalization of informal settlement, communal targeting, and the use of the state's coercive power against the most vulnerable.

3.5 Women, the Constitution, and the Architecture of Gender Violence

The constitutional provisions relating to women are among the most formal and most systematically dishonored in the constitutional text. Article 15(1) prohibits discrimination on grounds of sex. Article 15(3) permits special provisions for women and children. Article 39(a) directs the state to ensure equal rights to livelihood. Article 42 directs the state to make provision for just and humane conditions of work and maternity relief. The Seventy-Third and Seventy-Fourth Amendments require one-third reservation for women in panchayats and urban local bodies. The constitutional framework, in its text, presents a reasonably comprehensive commitment to the constitutional protection of women's rights and equality.

The gap between this textual commitment and the lived reality of Indian women is one of the starkest constitutional failures in the world's largest democracy. India ranks 127 out of 146 countries on the World Economic Forum's Global Gender Gap Index for 2024, a ranking that reflects profound inequalities in economic participation, educational attainment, health outcomes, and political empowerment. The National Family Health Survey data shows that 30 percent of women have experienced domestic violence, with rates much higher in certain states and communities. The National Crime Records Bureau data shows staggering rates of crimes

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against women, including rape (with conviction rates that fall far below what justice would require), dowry violence, trafficking, and acid attacks.

The constitutional analysis of gender violence requires understanding the ways in which the constitutional framework itself, beyond simply failing to prevent gender violence, actively enables it. The failure of the Constitution to address the personal law system is the most significant example. India operates a system of personal laws (Muslim personal law, Hindu personal law, Christian personal law, Parsi personal law) that govern matters of marriage, divorce, inheritance, and guardianship, and these personal laws are, in most of their applications, significantly discriminatory against women. A Muslim woman's right to divorce (before the 2019 Muslim Women (Protection of Rights on Marriage) Act) was significantly more restricted than her husband's. A Hindu daughter's succession rights to ancestral property were inferior to those of sons until the 2005 amendments to the Hindu Succession Act, and even after those amendments, the practical assertion of those rights in family contexts is contested and often violent.

The Constitution's failure to have a Uniform Civil Code, which was a Directive Principle under Article 44, is a failure that has been maintained by the intersection of two constitutional problems: the communal politics that have made the issue of personal law reform an identity battlefield rather than a gender justice question, and the constitutional deference to religious community autonomy that has protected discriminatory personal laws from the full application of the equality guarantees under Article 14. This deference, which has been characterized as constitutional pluralism by its defenders and as constitutional complicity in gender discrimination by its critics, represents the sacrifice of women's constitutional equality on the altar of religious community identity politics: a sacrifice that the women most affected by discriminatory personal laws have not been asked to endorse.

The recent debate over the Uniform Civil Code has become intensely politicized by the BJP government's adoption of it as an agenda item, not primarily in the context of gender justice but in the context of the subordination of Muslim personal law and the cultural assertion of Hindu majoritarian norms. This politicization has made genuine constitutional reform of personal law more difficult rather than easier, because it has associated the legitimate constitutional demand for gender equal personal law with a majoritarian agenda that Muslim and other minority communities reasonably fear. The constitutional failure here is not merely the failure to enact reform but the capture of a constitutional obligation (gender equality in personal law) by a communal political project that has converted it from a demand of the marginalized into a weapon against them.

CHAPTER FOUR: POWER DISTRIBUTION AND ITS DISCONTENTS: THE CONSTITUTIONAL ARCHITECTURE OF INEQUALITY

4.1 The Third Tier Failure: Panchayati Raj and the Unfinished Constitutional Revolution

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The Seventy-Third and Seventy-Fourth Constitutional Amendments, enacted in 1992 and coming into force in 1993, represented the most significant structural constitutional reform since the adoption of the original Constitution. They constitutionalized a third tier of government by providing constitutional status to panchayati raj institutions (rural local bodies) and urban local bodies, requiring their regular elections, mandating reservation of seats for scheduled castes, scheduled tribes, other backward classes, and women, establishing State Finance Commissions to recommend the devolution of financial resources, and requiring the constitution of District Planning Committees for integrated local planning.

These amendments were the culmination of decades of advocacy for genuine decentralization and grassroots democracy, rooted in the Gandhian tradition of village self-governance (gram swaraj) and the democratic decentralization movement of the 1980s. They created the constitutional infrastructure for a form of governance genuinely closer to the people, genuinely reflective of local needs and priorities, and genuinely accessible to those who were marginalized by the scale and elitism of national and state politics.

The gap between this constitutional promise and the reality of panchayati raj institutions thirty years after the amendments is one of the most comprehensively documented failures of constitutional implementation in Indian history. The reasons for this failure are structural, political, and constitutional, and understanding them illuminates the broader problem of power distribution in the Indian constitutional order.

Structurally, the Seventy-Third Amendment required states to devolve specific functions, powers, and finances to panchayats, listing twenty-nine subjects in the Eleventh Schedule as potential areas of panchayat activity. But the devolution was left to state discretion: states were required to constitute State Finance Commissions and hold elections, but the actual transfer of functions, functionaries, and funds was optional. The result has been highly uneven devolution: states like Kerala, Karnataka, and West Bengal (in its earlier period) have devolved significant powers and resources to panchayats, creating functional local governments with genuine administrative capacity. Most other states have conducted elections, constituted the formal institutions, and devolved almost no real power.

Politically, the reluctance of state governments to devolve power to panchayats reflects the rational self-interest of the state-level political classes who are the intended source of that power. State legislators who lose their control over local government spending, patronage, and project allocation to panchayat presidents and ward members lose a significant source of political patronage and political power. The incentive to restrict panchayat autonomy is structural, and the constitutional framework, by leaving devolution to state discretion rather than mandating it as a right of panchayats, has allowed this incentive to prevail.

Financially, panchayats in most states have neither the own-source revenue nor the devolved finances to function as genuine governments. Their dependence on state-level transfers, which are conditional on state priorities and subject to political manipulation, means that the financial basis for local self-governance is systematically inadequate. The State Finance Commissions, whose constitutional function is to recommend the devolution of state taxes to local bodies, have in most states made recommendations that are far below the resources needed for local

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governments to discharge their constitutional functions, and even these inadequate recommendations have often been only partially implemented by state governments.

The consequences of the panchayat governance failure for ordinary citizens are direct and severe. Rural infrastructure, water supply, sanitation, education, public health, and social welfare, all functions that panchayats should be managing according to the constitutional scheme, are in most states managed by state-level departments whose bureaucracies are distant, inaccessible, and unaccountable to local communities. The corruption that characterizes central and state government spending on rural development is, in significant part, the consequence of the absence of genuine local accountability: when the people responsible for spending are not embedded in the community where the spending occurs, when they do not face electoral accountability from those affected by the quality of spending, and when the oversight mechanisms of the state are formal rather than substantive, the conditions for corrupt diversion are present and are realized at enormous scale.

4.2 The Finance Commission and the Fiscal Constitution: A Structural Analysis

The Finance Commission of India, constituted every five years under Article 280 of the Constitution to recommend the allocation of central taxes between the Union and the states, is one of the most consequential constitutional institutions that is least understood in public discourse. The Finance Commission's recommendations determine the financial resources available to state governments for their constitutional responsibilities, and the principles on which those recommendations are based reflect fundamental constitutional choices about the distribution of fiscal power in the federal system.

The Fifteenth Finance Commission's recommendations for the period 2021-2026, accepted by the Central government in 2021, allocated 41 percent of the divisible pool of central taxes to the states, a figure that is lower than the share recommended by the Fourteenth Finance Commission (42 percent) and that was contested by several state governments as insufficient for the discharge of state constitutional responsibilities. The reduction, though marginal in percentage terms, reflected a broader trend toward fiscal recentralization in which the central government has expanded its direct expenditure (through centrally sponsored schemes over which states have limited control) while reducing the share of unconditional tax devolution that states can use for their own priorities.

The design of the Finance Commission's devolution criteria also reflects constitutional choices about which states are prioritized in fiscal transfers. The Fifteenth Finance Commission's criteria included population (both 1971 census, reflecting earlier population, and 2011 census, reflecting current population), area, forest and ecology cover, demographic performance (rewarding states with lower fertility rates), and per capita income. The weighting of these criteria has been politically contested: southern states, which have lower population growth rates, lower poverty rates, and better human development outcomes than northern states, argued that the criteria unfairly transferred fiscal resources from better-performing states to worse-performing states without creating adequate incentives for improvement. Northern states (Uttar Pradesh, Bihar, Madhya Pradesh, Rajasthan) that have larger populations, higher poverty rates, and worse governance outcomes receive larger per capita shares of Finance Commission devolution.

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The constitutional significance of this fiscal federalism debate extends beyond the specific numbers to the question of constitutional incentives. A fiscal system that unconditionally transfers resources to poorly performing states without linking transfers to governance quality or human development outcomes creates weak incentives for state governments to improve governance. But a fiscal system that conditions transfers on governance performance risks penalizing the poor citizens of badly governed states for the failures of their governments. The design of fiscal transfers that simultaneously address equity, efficiency, and incentives in the constitutional federal framework is one of the most technically complex challenges in constitutional economics, and the Indian framework has addressed it only partially and inconsistently.

The constitutional relationship between fiscal federalism and democratic accountability requires, from a theoretical perspective, that the level of government that is accountable to citizens for the delivery of a service also has the financial resources to deliver it. When states are accountable for health, education, and local infrastructure but do not have the financial resources to discharge these responsibilities adequately, the result is an accountability gap: citizens hold the state government responsible for poor service delivery, but the state government can legitimately (and often correctly) attribute poor delivery to insufficient central transfers. This constitutional buck-passing creates a governance problem that is simultaneously real (states do not have enough money) and ideological (states often use the financial excuse to avoid accountability for poor governance choices within their available resources).

4.3 The Central Services and the Democratic Deficit in Administration

The constitutional architecture of the All India Services (the Indian Administrative Service, the Indian Police Service, and the Indian Forest Service), established under Article 312 of the Constitution, creates a system of elite central cadres whose deployment to state governments is constitutionally authorized but whose ultimate accountability is to the Union government rather than to the state governments they serve. This structure was designed to provide the new Indian state with a unified administrative backbone across the diverse political landscape of the states: a guarantee that national standards and national interests would be maintained even in states governed by parties opposed to the national government.

The constitutional logic of this system reflected the anxieties of the post-partition, post-independence period about national unity and administrative competence. But its constitutional consequences have been, over seven decades, significantly negative for the democratic accountability of state administration. An IAS officer posted in a state knows that their career progression depends ultimately on their appraisal by the Union government's Department of Personnel and Training and on their relationship with the Central government's political leadership. This creates a structural conflict between the officer's formal accountability to the state government and their career accountability to the Centre. In practice, officers who displease the state government may find themselves transferred to inconvenient postings within the state, while officers who displease the Centre may find their empanelment for senior positions in Central government delayed or denied. The result is an administrative culture in which officers navigate competing political pressures rather than serving the constitutional functions of neutral, professional, accountable administration.

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The tenure insecurity that affects IAS officers in state postings is a constitutional symptom of this structural problem. Officers are transferred with extreme frequency (studies have found average tenures of six to twelve months in many state-level positions) by state governments that use transfer powers to reward loyalty and punish independence. The constitutional provisions of Article 311, which protect civil servants from arbitrary dismissal, do not protect against transfer, which is the state government's principal tool for managing the service politically. The Supreme Court's Prakash Singh judgment addressed tenure insecurity for police officers, but the more general constitutional problem of tenure insecurity across the civil service remains unaddressed.

The democratic deficit in administration extends to the constitutional design of district administration. The District Collector, the apex administrator at the district level, is a member of the IAS appointed by the state government. The Collector is responsible for land records, revenue collection, implementation of central and state government schemes, law and order coordination, and disaster management, a combination of functions that makes the office extraordinarily powerful in the lives of rural citizens. The Collector is not elected, is not directly accountable to local residents, and can be transferred at the will of the state government. The constitutional provisions for local self-government under the Seventy-Third Amendment created elected panchayats at the district level (district panchayats), but these elected bodies operate alongside the Collector and the revenue administration in a relationship that is constitutionally unclear and practically subordinate: the elected body has the constitutional mandate but the Collector has the administrative capacity, the information, and the historical authority.

This constitutional architecture of district administration, in which the state exercises power through an appointed administrator who is accountable upward to the state government rather than outward to the local community, is a direct inheritance of the colonial system of district administration that was designed to manage colonial subjects rather than to serve democratic citizens. Its survival in the constitutional order of independent India represents the continuation of colonial administrative logic under the rubric of developmental governance.

CHAPTER FIVE: THE NATIONALIST TURN AND THE CONSTITUTION OF MAJORITARIAN DEMOCRACY

5.1 Hindu Nationalism, the Constituent Assembly, and the Secular Compromise

The struggle over the religious character of the Indian state was one of the most intense and consequential debates in the Constituent Assembly. The secular provisions of the Constitution represented a hard-won compromise between those who sought a genuinely secular state (in the European sense of strict separation between state and religion) and those who sought a state that would reflect India's Hindu civilizational heritage. The compromise that was reached, articulated most clearly by Nehru's vision of "Sarva Dharma Sambhava" (equal respect for all religions) rather than strict church-state separation, embedded a form of secularism that was always vulnerable to the argument that a secular state could also be a Hindu cultural state.

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The vulnerability of this constitutional compromise to Hindu nationalist mobilization has been apparent since the very beginning of the constitutional experiment. The Rashtriya Swayamsevak Sangh, founded in 1925 and the organizational parent of the current ruling party, rejected the Constitution from the outset as a foreign, Western document that failed to recognize India's Hindu civilizational character. M.S. Golwalkar, the ideological architect of the RSS in its formative period, explicitly called for India to recognize the centrality of Hindu culture and religion in its constitutional identity, arguing that minorities should have no claims to distinct identity within the Hindu state.

These views were marginal in the immediate post-independence period, when the trauma of Partition, in which religious nationalism had produced catastrophic violence, gave the secular constitutional settlement a powerful emotional resonance. But the conditions that maintained secular constitutional politics were always fragile: they depended on a dominant Congress party that could aggregate diverse interests across religious and caste lines, on a relatively equalized distribution of political resources that prevented any single community from achieving political dominance, and on an economic development model that could deliver enough material progress to sustain the legitimacy of the secular state.

When those conditions began to erode in the 1980s, with the fragmentation of Congress dominance, the growth of Hindu nationalist politics through the VHP-triggered Ram Janmabhoomi movement, and the BJP's electoral rise through the 1990s, the constitutional order's vulnerability to majoritarian capture became increasingly apparent. The demolition of the Babri Masjid on December 6, 1992, represented the most dramatic single event of constitutional failure in this process: an illegal act of communal destruction committed in broad daylight by a crowd of hundreds of thousands, organized by political forces with representation in Parliament and state governments, tolerated by the state governments of BJP-ruled states and inadequately prevented by the central government, and inadequately prosecuted by the constitutional machinery for decades afterwards. The Supreme Court's judgment in M. Siddiq v. Mahant Suresh Das (2019), which awarded the disputed site to the Hindu party while acknowledging that the demolition was "illegal," combined constitutional remedy with constitutional normalization of the original illegality in a way that illuminated the limits of judicial constitutionalism in the face of majoritarian capture.

5.2 The Citizenship Amendment Act and the Constitutional Exclusion of Muslims

The Citizenship Amendment Act, 2019 (CAA) is among the most constitutionally significant pieces of legislation enacted in the current government's tenure, both for what it provides and for what it reveals about the constitutional direction of the Hindu nationalist project. The CAA created a new pathway to Indian citizenship for religious minorities (Hindus, Sikhs, Buddhists, Jains, Parsis, and Christians) from Afghanistan, Bangladesh, and Pakistan who had entered India before December 31, 2014. The explicit exclusion of Muslims from this pathway, in a law enacted by a government that publicly identifies with Hindu nationalism, was widely characterized as a violation of the constitutional principle of religious equality under Article 14.

The constitutional challenge to the CAA has been pending before the Supreme Court since 2020. More than 200 petitions challenging the Act are before the Court, and their prolonged pendency,

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extending beyond five years, is itself a constitutional symptom: the Supreme Court's institutional reluctance to adjudicate a politically charged constitutional question against the government has meant that a law whose constitutional validity is seriously in doubt remains operative for years without constitutional resolution. This pattern of judicial delay as a form of constitutional deference to executive action is one of the clearest manifestations of the democratic retrogression that comparative constitutional scholars have documented in the Indian case.

The constitutional argument against the CAA is, in its simplest form, that it discriminates on the ground of religion: by creating a citizenship pathway for all religious minorities from the three designated countries except Muslims, it treats Muslims differently from others solely on the ground of their religion. The government's defense is that the law is not about Indian citizens' rights at all but about the treatment of persecuted minorities from countries that are constitutionally Islamic states: Hindus, Sikhs, and others are persecuted minorities in Pakistan, Bangladesh, and Afghanistan because those states are Islamic, and no Muslim can claim persecution on account of being a member of the majority religion of those states.

This defense is legally interesting but constitutionally insufficient for several reasons. First, Ahmadiyya Muslims and Shia Muslims in Pakistan are persecuted minorities in a Sunni-dominated Islamic state and would, by the government's own logic, qualify for the same protection as Hindu minorities; their exclusion from the CAA is not explained by the government's stated rationale. Second, the geographic limitation to three Muslim-majority countries excludes Hindus and other non-Muslims persecuted in Sri Lanka, Myanmar, and China from the benefit of the Act, suggesting that the criterion is not the religious character of the neighboring state but the religious identity of the beneficiary. Third, and most fundamentally, the constitutional prohibition of discrimination on grounds of religion under Article 14 and Article 15 applies to the treatment of all persons in India, not merely to Indian citizens, and the extension of a benefit (citizenship pathway) to some religious groups but not others is a form of discrimination subject to constitutional scrutiny regardless of the policy rationale offered.

The CAA must be read together with the proposed National Register of Citizens (NRC) to understand its full constitutional significance. The NRC, as implemented in Assam in 2019, required all residents to prove their citizenship through documentary evidence going back to 1971. The Assam NRC process excluded approximately 1.9 million persons who could not produce the required documentation, raising the prospect of their statelessness. Nationally, the combination of an NRC that would require all citizens to prove their citizenship with a CAA that provides an alternative path to citizenship for non-Muslim excluded persons but not for Muslims creates a constitutional framework that could systematically strip Indian Muslims of their citizenship without explicitly targeting them: an NRC that traps them combined with a CAA that offers no exit.

This potential constitutional combination is the most serious constitutional crisis facing India in the 2020s and 2030s. It represents the possible use of the constitutional machinery of citizenship law and administrative procedure to produce the effective exclusion of a religious minority from the constitutional community of citizenship: not through the formal confiscation of citizenship (which would be constitutionally obvious) but through the administrative burden of documentary proof (which falls disproportionately on the poor, the illiterate, and those whose historical

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documentation is inadequate) combined with the deliberate non-provision of any alternative pathway for those of the excluded community who cannot satisfy the documentary requirements.

5.3 The Unlawful Activities (Prevention) Act as Constitutional Weapon: Dissent as Terror

The Unlawful Activities (Prevention) Act, 1967 (UAPA), as amended in 2004, 2008, 2012, and 2019, has become the primary constitutional instrument of political repression in India, used not to combat genuine terrorism and militancy but to criminalize dissent, journalism, academic research, and civil society advocacy that the government finds inconvenient. Its transformation from a narrowly targeted counter-insurgency statute into a general-purpose instrument of political control is a constitutional failure of the first order.

The 2019 amendment to the UAPA added the power to designate individual persons as "terrorists" without any trial or judicial determination, based solely on an executive notification. A person designated under this provision loses the right to hold a bank account, travel abroad, or engage in many business activities, and the designation itself becomes a form of civic death without the due process that the Constitution guarantees. The designated "terrorists" under this provision have included journalists, human rights activists, lawyers, and academics, not only those genuinely involved in terrorist activity.

The constitutional problems with the UAPA as applied are numerous and severe. The bail provisions require the accused to demonstrate that the charges are prima facie false, inverting the constitutional presumption of innocence. The statutory period for investigation is extended to 180 days before the filing of a chargesheet, meaning that accused persons can be held in pre-trial detention for six months without trial, a violation of the right to speedy trial under Article 21. The definition of "terrorist act" and "unlawful activity" is drawn so broadly that it encompasses constitutionally protected speech, assembly, and association.

The Bhima Koregaon case, in which sixteen academics, lawyers, activists, and human rights defenders were arrested between 2018 and 2020 under the UAPA for alleged Maoist links, is the most internationally visible example of the UAPA's use as a political weapon. The accused in the case, who include the late Jesuit priest and labor rights advocate Stan Swamy (who died in custody in 2021 without being tried, at the age of 84, after being denied bail despite his severe medical condition), the poet and academic Varavara Rao, and others whose connections to violent Maoist activity have been disputed by multiple human rights organizations, have been held in custody or under onerous bail conditions for years without trial completion.

The Supreme Court's response to the UAPA cases has been, with notable exceptions, more deferential to the state than the constitution requires. The bail standards applied by most High Courts and the Supreme Court itself have been significantly more restrictive for UAPA accused than the constitution's guarantees of personal liberty should permit, reflecting the courts' general deference to national security claims by the executive. Justice D.Y. Chandrachud's judgment in the Stan Swamy bail matter, which expressed concern about the conditions of the accused's detention but was unable to grant bail before his death, is a monument to the tragedy of judicial insufficiency in the face of executive overreach.

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The constitutional reform needed here is direct: the UAPA needs to be fundamentally revised to restore the presumption of innocence in bail hearings, to narrow the definition of terrorist act to genuine violence-related conduct, to remove the executive designation of individuals as terrorists without judicial process, and to ensure that political dissent, academic research, and advocacy activity cannot constitute an "unlawful activity" under the Act regardless of the political positions those activities support. The Foreign Contribution (Regulation) Act similarly needs to be revised to restore the constitutional rights of civil society organizations to receive funding from foreign sources for legitimate advocacy purposes.

CHAPTER SIX: THE CONSTITUTION AND THE FOURTH ESTATE: HOW PRESS FREEDOM DIES IN SLOW MOTION

6.1 Article 19 and the Erosion of Media Independence

The freedom of the press, though not explicitly mentioned in the Indian Constitution as a distinct right (unlike the US First Amendment), is well-established as a component of the freedom of speech and expression guaranteed by Article 19(1)(a). The Supreme Court, in Express Newspapers (Pvt. Ltd.) v. Union of India (1958), held that freedom of the press is essential to a functioning democracy and is protected by Article 19(1)(a). The constitutional foundation of press freedom in India is, therefore, reasonably strong in textual and jurisprudential terms.

But press freedom in India has been in sustained and accelerating decline for more than a decade. Reporters Without Borders ranks India 159th out of 180 countries in its 2024 World Press Freedom Index, placing it below states that are commonly regarded as having significantly more repressive political systems. Freedom House designates India's press as "not free." The Committee to Protect Journalists has documented India as one of the world's most dangerous countries for journalists, with multiple journalists killed in connection with their work and dozens imprisoned.

The mechanisms of press unfreedom in India are multiple, and they operate through constitutional, legislative, and informal channels.

The constitutional mechanism of sedition, Section 124A of the Indian Penal Code (retained in substantially similar form in the Bharatiya Nyaya Sanhita, 2023, as Section 152), criminalizes speech that "excites or attempts to excite disaffection towards the Government established by law in India." The Supreme Court, in 1962 in Kedar Nath Singh v. State of Bihar, upheld sedition as constitutionally valid while narrowing its application to speech that incites violence or public disorder. But in practice, sedition has been used against journalists, cartoonists, academics, and citizens who criticize the government without any connection to violence. The Supreme Court's 2022 order in S.G. Vombatkere v. Union of India suspended the operation of the sedition provision pending reconsideration, an important interim measure. The government's response was to re-enact substantially similar provisions in the new criminal codes, continuing the constitutional problem in a renamed form.

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The legislative mechanism of the Information Technology Act, 2000, as amended in 2008 and through the rules of 2021, creates extensive legal risk for online journalism. Section 66A, which criminalized online speech causing "annoyance" and was struck down by the Supreme Court in Shreya Singhal v. Union of India (2015) as unconstitutional, was followed by a range of other provisions and rules that have created continuing legal risk for digital journalism: the requirement that intermediaries (social media platforms, news websites) remove content on government complaint within 24 hours, the creation of government-appointed fact-checking units with the power to designate content as false and require its removal (struck down by the Bombay High Court in 2024 but appealed), and the broad definition of "harmful content" that encompasses political criticism.

The informal mechanisms of press control are equally important constitutionally: the concentration of media ownership in a small number of corporate groups with close ties to the government (the Reliance group's ownership of Network18 and numerous other media properties is the most prominent example), the use of government advertising as a financial lever to reward favorable media and punish critical journalism, the social media manipulation by state-affiliated actors to drown critical reporting in noise and harassment, and the systematic use of investigative agencies (the CBI, the ED, the IT department) to threaten media organizations and their owners with investigation if they persist in critical coverage.

The constitutional analysis of media freedom in India requires recognition that the freedom of the press, like all fundamental rights, is not merely about formal legal permission to publish but about the practical conditions under which independent journalism can be sustained. A media environment in which ownership is concentrated in politically aligned corporate groups, in which economic survival depends on government advertising, in which legal risk is substantial and escalating, and in which journalists face personal harassment and physical danger for doing their work is a media environment in which constitutional press freedom is nominal rather than real, regardless of the formal provisions of Article 19.

6.2 The Internet and the Constitutional Right to Information: Shutdowns, Surveillance, and Digital Control

India is the world's largest democracy in terms of internet users (over 900 million as of 2024) and is simultaneously the world's largest democracy in terms of government-ordered internet shutdowns. In 2023, India accounted for 116 of the world's 283 documented internet shutdowns, according to the Access Now report, more than any other country in the world. Internet shutdowns, which cut all internet access in a defined geographic area for a defined period, are ordered by state governments and district administrations under Section 144 of the CrPC (and now under the Bharatiya Nagarik Suraksha Sanhita) or under the Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017. They have been imposed in contexts ranging from communal violence prevention to the suppression of protest movements to the prevention of paper leakage in examinations.

The constitutional challenge to internet shutdowns was addressed by the Supreme Court in Anuradha Bhasin v. Union of India (2020), in which the Court held that the freedom of speech and expression under Article 19(1)(a) includes the freedom to exercise that right over the

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internet, and that orders restricting internet access must be in accordance with law, must be proportionate, must be for a limited duration, must be subject to judicial review, and must be published so that affected persons can challenge them. The judgment was hailed as a landmark vindication of digital rights.

But the practical effect of the Anuradha Bhasin judgment has been limited. Internet shutdowns have continued at a high rate after 2020. The judicial review contemplated by the judgment has been inaccessible to most shutdown-affected persons because the High Courts in the relevant states are often distant, the proceedings take time, and the shutdowns are of limited duration (often weeks rather than months) making the judicial challenge moot before it can be resolved. The High-level Review Committee that the Court required to review shutdown orders has been constituted in most states but its proceedings are not public, its orders are not consistently published, and its effectiveness as an accountability mechanism is widely doubted.

The constitutional surveillance problem is equally serious. The government's Centralised Monitoring System, which provides intelligence agencies and law enforcement with broad access to telecommunications traffic, combined with the use of commercial spyware (the Pegasus spyware scandal of 2021, in which the devices of journalists, opposition politicians, activists, and judges were reportedly targeted, was the most documented case of politically motivated surveillance in Indian democratic history), creates a constitutional environment in which the privacy rights recognized by the Supreme Court in K.S. Puttaswamy v. Union of India (2017) are systematically violated by the state without adequate oversight, authorization, or accountability. The Personal Data Protection Act, 2023 (Digital Personal Data Protection Act), while creating a framework for data protection, exempts government agencies from many of its provisions and has been criticized by digital rights scholars as creating more protection for the state's data collection practices than for citizens' privacy rights.

CHAPTER SEVEN: THE UNFINISHED BUSINESS OF THE CONSTITUTION: WHY REFORM IS NOT ENOUGH

7.1 The Limits of Amendment: What Cannot Be Fixed Within the Constitutional Framework

The analysis of the preceding chapters and parts of this textbook has generated a comprehensive diagnosis of the Indian Constitution's failures. The question that now demands engagement is the remedial one: can the identified failures be addressed through constitutional amendment, or do they require the more radical medicine of a new constitution?

This is not a merely academic question. It is a practical and politically urgent one, because the argument for a new constitution is the most politically contentious claim that can be made in Indian constitutional discourse. Defenders of the existing constitution argue that its basic structure doctrine, its fundamental rights provisions, and its democratic institutions have provided a framework within which India has survived as a pluralist democracy in a neighborhood of authoritarian states, and that the risks of constitutional replacement (particularly

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the risk that a new constitution would be captured by the Hindu nationalist majority and used to formalize the exclusion of minorities) outweigh the risks of continuing with a reformed version of the existing document.

These are serious arguments that deserve serious engagement, and they will be engaged in the chapters that follow. But they must first be tested against the evidence, and the evidence is that the accumulation of constitutional failures documented in this textbook cannot be addressed by the amendment process that the existing Constitution provides, for reasons that are both structural and political.

Structurally, the amendment process under Article 368 requires a two-thirds majority of Parliament present and voting, together with a simple majority of the total membership, and for certain provisions also requires ratification by at least half the state legislatures. This is a demanding threshold that is difficult to meet for significant constitutional change, particularly change that threatens the interests of the political parties that control Parliament. The concentration of executive power that a constitutional reform agenda would need to address cannot be reformed by an executive-dominated Parliament with a stake in retaining that power. The fiscal federalism provisions that give the Centre disproportionate financial power cannot be reformed by a Parliament in which the majority party controls the Centre and benefits from fiscal centralization. The anti-defection law that turns legislators into instruments of party leadership cannot be reformed by party leaders who benefit from it. The gubernatorial system that serves central party interests cannot be reformed by a central government that uses it as a political weapon.

This structural problem of incumbent-protecting constitutional sclerosis is not unique to India. Constitutional theorists including Bruce Ackerman have addressed the general problem of constitutional moments, periods when genuine constitutional transformation is possible because the normal alignment of interests that protects constitutional sclerosis is disrupted by popular mobilization, political crisis, or institutional failure. In India's constitutional history, such moments have occurred but have not been fully utilized: the post-Emergency constitutional moment of 1977-1979 produced the Forty-Fourth Amendment (important but limited) but not the fundamental reconstruction that the Emergency's constitutional revelations warranted. The constitutional reform commission of 2000-2002 (the National Commission to Review the Working of the Constitution, under M.N. Venkatachaliah) produced a comprehensive report recommending hundreds of changes but was largely ignored by the succeeding government.

The political problem is equally fundamental. Constitutional amendment requires political will, and political will for fundamental constitutional reform is most available from those out of power (who have the most to gain from redistributing constitutional power) and least available from those in power (who have the most to lose). The brief periods of constitutional opening in Indian history have been followed by the restoration of the incumbent's interest in constitutional stability. The most hopeful constitutional reform scenario requires either a political moment (like 1977) in which democratic forces briefly command parliamentary power with a genuine reform mandate, or a process of constitutional reform that is insulated from normal parliamentary politics by a constituent assembly mechanism that genuinely represents the breadth of Indian society.

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7.2 The Case for a New Constitution: Philosophical, Theoretical, and Practical Grounds

The argument for a new constitution for India rests on several distinct but mutually reinforcing grounds: historical, philosophical, theoretical, and practical.

The historical ground, traced throughout this textbook, is the colonial genealogy of the existing Constitution. A document that derives sixty percent of its operative provisions from a colonial statute designed to manage colonial subjects, that was drafted by an unrepresentative elite, that was never submitted to popular ratification, and that has served as the constitutional machinery for the perpetuation of colonial administrative structures through the post-independence period cannot claim the full democratic legitimacy that a genuine constitutional order requires. This is not merely a rhetorical point. It connects to the constitutional theory of popular constituent power (pouvoir constituant) developed by Emmanuel Sieyès and elaborated in modern constitutional theory by Jürgen Habermas, Frank Michelman, and others: the view that a constitution's authority derives from the self-constituting act of a political community giving itself its fundamental law, and that a document that was not produced by such an act lacks the deep democratic legitimacy that distinguishes a constitution from a mere statute.

The philosophical ground, developed in the engagement with Rawls in Chapter One of this Part, is that a constitutional order designed by people who knew their position in society, and who designed constitutional rules to protect that position, fails the test of constitutional justice. A new constitution, drafted by a process that is genuinely representative of all segments of Indian society and that is designed with genuine attention to the claims of the most vulnerable, would represent a constitutional order with a more legitimate claim to embody the principles of justice than the existing document. The Rawlsian analysis suggests that the people most qualified to judge whether the existing constitution is just are those who have suffered most under it: the dalits, the adivasis, the rural poor, the urban informal workers, the women, the religious minorities, whose experience of the constitutional order has been, as the evidence in this textbook has documented, one of systematic exclusion, marginalization, and victimization rather than constitutional protection and empowerment.

The theoretical ground, drawing on the comparative constitutional literature surveyed in Part Twelve, is that constitutional transformation is sometimes necessary to achieve democratic renewal that cannot be achieved through incremental amendment. Hungary's constitutional retrogression, Poland's partial recovery, South Africa's transformative transition, and Germany's post-Nazi reconstruction are all examples (in their different ways) of the need for fundamental constitutional reconstruction rather than merely amendment when the existing constitutional order has been comprehensively compromised. India's specific form of constitutional compromise, the combination of colonial inheritance, judicial deference to executive power, Hindu nationalist capture of state institutions, and systematic failure to deliver on constitutional rights to the majority of citizens, may similarly require fundamental reconstruction rather than merely amendment.

The practical ground is the evidence of seven decades of failed incremental reform. The Emergency, the Forty-Fourth Amendment, the 73rd and 74th Amendments, the Right to Education Act, the LARR Act, the RTI Act, the UAPA (and its amendments), the Forest Rights

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Act, the anti-defection law, the electoral bonds scheme (and its judicial striking down), the Lokpal, and many other constitutional and legislative interventions have each addressed specific symptoms of constitutional failure without addressing the structural causes. The pattern of reform followed by circumvention, of constitutional achievement followed by constitutional erosion, suggests that the structural incentives of the constitutional order work consistently against substantive reform and in favor of the interests of those who control the constitutional machinery.

7.3 What a New Constitution Should Contain: A Preliminary Agenda

The argument for a new constitution is not an argument for constitutional chaos or for the abolition of constitutional governance. It is an argument for a genuinely new constitutional framework that learns from the failures of the existing one. A preliminary constitutional reform agenda, drawn from the analysis of this textbook, might include the following elements.

First, a genuinely representative constituent process. A new constitution must be drafted by a constituent assembly that is genuinely representative of India's full demographic diversity: not merely elected but reserved for historically marginalized communities in proportion to their population and their historical disadvantage, with mechanisms for the participation of civil society organizations, academic institutions, and citizen deliberation that go beyond formal election. The process of constitutional drafting must be transparent, multilingual, and accessible to the citizens whose lives it will govern.

Second, the abolition of the colonial administrative inheritance. A new constitution should explicitly repeal and replace the Government of India Act, 1935 derived provisions with genuinely indigenous and democratic alternatives. The emergency powers should be fundamentally redesigned to be genuinely exceptional, time-limited, and subject to independent judicial authorization. The preventive detention framework should be abolished and replaced with provisions that permit detention only where a court has authorized it, on evidence, for a limited period, with full procedural safeguards. The Governor's office should be either abolished or replaced by an elected state head with a fixed term and genuine independence from the Centre.

Third, justiciable social and economic rights. A new constitution should make the social and economic rights that are currently directive principles into genuinely justiciable fundamental rights, with appropriate institutional mechanisms for their phased implementation and enforcement. The right to food, the right to health, the right to education, the right to housing, the right to livelihood, and the right to social security should be constitutionally enforceable, following the South African model, with the state required to take reasonable legislative and other measures within its available resources to achieve the progressive realization of these rights.

Fourth, genuine fiscal federalism. A new constitution should redesign the federal financial framework to provide state governments with fiscal resources that match their constitutional responsibilities. This requires either the transfer of significant tax-raising powers to states, or the constitutionalization of federal grants at a level sufficient for state governments to discharge their

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functions, or some combination of both. The Finance Commission should be redesigned to be genuinely independent, to have a mandate that includes assessing the adequacy of fiscal transfers for constitutional responsibilities, and to produce recommendations that are binding rather than merely recommendatory.

Fifth, radical decentralization. The 73rd and 74th Amendments should be strengthened into a genuine constitutional guarantee of local self-government: local bodies should have constitutionally guaranteed powers, constitutionally guaranteed resources (including own-source revenue powers), and constitutionally guaranteed administrative capacity. The state legislature's discretion over devolution should be replaced by constitutional mandates.

Sixth, proportional representation. The electoral system should be redesigned to incorporate a significant element of proportional representation, either through a mixed-member proportional system (on the German or New Zealand model) or through a party list system for a portion of parliamentary seats. This reform would require that constitutional representation more accurately reflect the distribution of political preferences in the electorate, reducing the distortions of the first-past-the-post system that have contributed to the concentration of political power.

Seventh, the constitutional regulation of political parties. Political parties should be required to demonstrate internal democracy, transparency of finance, and adherence to constitutional values as conditions of their registration and participation in elections. The anti-defection law should be reformed to prevent its use against legislators who vote against their party on matters of constitutional principle, while retaining its core function of preventing wholesale floor-crossing for personal gain.

Eighth, an independent constitutional court. The Supreme Court of India performs both constitutional adjudication (the interpretation and enforcement of constitutional rights and the structure of government) and appellate jurisdiction in criminal and civil cases. The combination of these functions in a single court is constitutionally problematic: it dilutes the Court's attention to constitutional questions, creates a docket crisis of catastrophic proportions, and confuses the institutional identity of the Court. A new constitution should establish a separate Constitutional Court, on the South African, German, or Spanish model, with exclusive jurisdiction over constitutional questions, an independent appointment process, and a mandate for genuine constitutional transformation. The remaining Supreme Court would exercise appellate civil and criminal jurisdiction, with its own appointment and organizational structure.

Ninth, strict party finance regulation. Political finance should be constitutionally regulated: there should be constitutional limits on campaign expenditure that are both realistic and enforceable, a constitutional requirement of full public disclosure of all political donations above a minimal threshold, and constitutional prohibition of corporate donations to political parties (all the major democracies that have successfully regulated political corruption have moved in this direction). State funding of electoral campaigns, on a formula that provides resources to all parties that meet minimum electoral thresholds, would provide the resource base for democratic competition without corporate dependency.

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Tenth, a non-derogable core of rights. A new constitution should include a core of absolutely non-derogable rights: rights that cannot be suspended even during an emergency. This core should include at least the prohibition of torture, the right to habeas corpus, the prohibition of discrimination on grounds of religion and caste, the right to life, and the right to dignity. These non-derogable rights should be explicitly recognized as the constitutional minimum from which no emergency power or parliamentary majority can deviate.

CHAPTER EIGHT: BRITISH CONSTITUTIONAL COLONIALISM AND ITS MODERN PROGENY: THE UNFINISHED RECKONING

8.1 The Decolonization Illusion: Renaming Without Reforming

The Modi government's program of "decolonization" of Indian law, proclaimed as a central achievement of its second and third terms, has been among the most elaborately theatrical exercises in constitutional cosmetics in Indian legal history. The replacement of the Indian Penal Code with the Bharatiya Nyaya Sanhita, the Code of Criminal Procedure with the Bharatiya Nagarik Suraksha Sanhita, and the Indian Evidence Act with the Bharatiya Sakshya Adhiniyam, all enacted in 2023 and coming into force on July 1, 2024, represents a wholesale renaming of the three principal colonial criminal law statutes. The renaming is impressive in its symbolic ambition: the names are Sanskrit-derived, the numbering has been changed, and the government has presented the exercise as the completion of the constitutional revolution of 1947, the final dismantling of the colonial legal framework.

But the legal reality of the new codes is almost entirely continuous with the colonial codes they replaced. The new Bharatiya Nyaya Sanhita contains the same definition of murder as the IPC, the same laws of theft, robbery, and fraud, the same offenses against the state (including a provision functionally equivalent to sedition despite the public declaration that sedition was being abolished), the same framework for sexual offenses (with some additions), and the same basic structure of inchoate liability. The new Bharatiya Nagarik Suraksha Sanhita contains the same arrest powers, the same bail provisions (with minor modifications), the same trial procedure, and the same framework for the detention and production of accused persons. The new Bharatiya Sakshya Adhiniyam contains the same rules of evidence, the same admissibility framework, the same provisions on confessions, and the same structures of presumption.

The areas where the new codes diverge from their colonial predecessors are, with limited exceptions, areas where they expand rather than limit state power: the period of police custody before production before a magistrate is extended from fifteen to sixty days in terrorism cases, the power to conduct electronic searches and surveillance is given explicit statutory authorization, and the definitions of certain state security offenses are broadened. The colonial framework of executive dominance in the criminal process has been preserved and in some respects strengthened, while the colonial framework of rights protection (such as it was) has been preserved without significant improvement.

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This pattern of decolonization-as-renaming is the constitutional successor to a long tradition of Indian government exercises in constitutional symbolism without constitutional substance. The replacement of the Governor General with a President, the replacement of the ICS with the IAS, the replacement of the Government of India Act with the Constitution, all were real changes in the nationality and the political character of the operators of the constitutional framework, but all preserved the fundamental structures of colonial governance under new names. The 2023 criminal law reforms continue this tradition: they are changes in the dress of colonial law, not in its substance.

The genuine decolonization of Indian law would require not merely renaming but fundamental structural reform: the revision of the criminal justice framework to prioritize citizen protection over state control, the reform of the law of evidence to remove the colonial-era presumptions and coercive provisions, the redesign of the police and prosecution to be genuinely accountable to the communities they serve, and the replacement of the colonial framework of executive discretion in criminal proceedings with a framework that makes judicial authorization the normal rather than exceptional constraint on state power.

8.2 Colonial Impunity Laws: AFSPA and the Constitutional Zone of Exception

The Armed Forces (Special Powers) Act, 1958 (AFSPA) is the clearest surviving example of direct colonial constitutional inheritance in the Indian legal framework. The AFSPA gives members of the armed forces operating in "disturbed areas" extraordinary powers: the power to arrest without warrant, the power to use force to the extent of causing death on reasonable suspicion, the power to search without warrant, and crucially, the power to be tried for any act done "in good faith" in the course of operations only with the prior sanction of the Central government. This last provision, the prior sanction requirement, effectively insulates armed forces personnel from criminal prosecution for any act, including killing and torture, unless the Central government chooses to authorize prosecution, which it has done only in exceptional cases.

AFSPA was modeled on the Armed Forces Special Powers Ordinance of 1942, enacted by the British colonial government to suppress the Quit India movement and to give the military unconstrained powers in dealing with popular anti-colonial resistance. The colonial origin is not merely historical: the powers created by AFSPA and their practical operation in Manipur, Nagaland, Assam, Jammu and Kashmir, and other disturbed areas have been virtually identical to the powers exercised under the colonial ordinance, including the systematic use of summary killing, torture, enforced disappearance, and rape as instruments of counter-insurgency.

The constitutional challenge to AFSPA reached the Supreme Court in Naga People's Movement of Human Rights v. Union of India (1998), in which the Court upheld the Act's validity while providing some (largely ineffective) guidance on its exercise. More recently, in Extra Judicial Execution Victim Families Association v. Union of India (EEVFAM, 2016), the Supreme Court held that the immunity provided by AFSPA does not extend to "cold-blooded murders" and ordered an independent investigation into alleged encounter killings in Manipur. The investigation found prima facie evidence of extrajudicial killings in a significant proportion of the cases examined.

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But AFSPA continues in force. Its removal from specific areas has been incremental and politically managed rather than driven by constitutional principle. The constitutional argument for the Act's repeal is straightforward: a law that grants immunity from prosecution for killing to the armed forces is incompatible with the constitutional guarantee of the right to life under Article 21, with the constitutional prohibition of arbitrary killing, and with India's obligations under international law. The government's defense, that AFSPA is necessary to maintain the morale and operational effectiveness of the armed forces in difficult security environments, is a claim that has not been tested against the constitutional standard of proportionality: whether the security benefit of impunity justifies the constitutional cost of systematic state violence against citizens.

The AFSPA is, in this analysis, not merely a bad law. It is a constitutional statement: a declaration by the constitutional state that the lives of citizens in "disturbed areas" are less valuable than the operational convenience of the security forces. This statement is incompatible with the constitutional principle of equal protection of the law and with the constitutional guarantee of equal dignity for all citizens. Its survival for over six decades in the constitutional framework is evidence, if any more evidence were needed, of the constitutional order's systematic devaluation of the rights of marginalized communities in geographically and politically peripheral areas.

8.3 The British Judicial Inheritance: How Colonial Legal Culture Persists in the Twenty-First Century

Beyond the specific colonial statutes and constitutional provisions that have been analyzed throughout this textbook, there is a deeper level of colonial inheritance that is more diffuse but equally consequential: the inheritance of a legal culture shaped by the colonial training, the colonial institutional design, and the colonial purpose of the legal system.

The Indian legal profession is trained in law schools that use the same curricular frameworks, the same case law traditions, and largely the same pedagogical methods that were established during the colonial period. The central texts of Indian constitutional law are written in English. The primary sources of constitutional jurisprudence are cases decided by courts established by the colonial government. The doctrines of stare decisis, parliamentary sovereignty, the rule of law, natural justice, and judicial review, though now given constitutional grounding, are inherited from the English common law tradition and continue to be interpreted through the lens of that tradition.

This legal cultural inheritance has several consequences for the constitutional analysis of this textbook. First, it means that the constitutional imagination of Indian lawyers and judges is constrained by the conceptual categories of a legal tradition that was designed for a very different political and social context: the management of colonial subjects rather than the constitutional governance of free citizens. The categories of "reasonable restriction," "public order," "security of the state," "contempt of court," and others that are central to Indian constitutional law carry the colonial administrative connotations that were embedded in them when they were created, and those connotations continue to shape their application even when the explicit colonial purpose has been abandoned.

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Second, it means that constitutional reform proposals that require conceptual innovation beyond the inherited tradition encounter institutional resistance. The introduction of social and economic rights, the development of horizontal constitutional application to private actors, the recognition of collective rights of communities as distinct from individual rights, the development of constitutional remedies that address structural injustice rather than merely individual violations, all of these constitutional innovations have been recognized in varying degrees by the Indian courts, but they have had to struggle against a legal culture that treats them as departures from tradition rather than as developments within it.

Third, the colonial legal culture's emphasis on procedure over substance, on the formal correctness of legal process over the justice of outcomes, has deeply influenced the culture of the Indian legal system. The extraordinary delays of Indian litigation, the labyrinthine procedural requirements that make the courts inaccessible to the poor, the emphasis on the form of legal argument over the substance of the rights at stake, the culture of adjournment and delay that characterizes civil litigation, all of these are features of a legal system designed to manage disputes through attrition rather than to deliver justice efficiently. The poor person who cannot afford the decade-long process of civil litigation is, in this system, systematically disadvantaged relative to the wealthy party who can.

CHAPTER NINE: JURISPRUDENTIAL FRAMEWORKS FOR CONSTITUTIONAL TRANSFORMATION

9.1 Critical Legal Studies and the Indian Constitution

The Critical Legal Studies (CLS) movement, which emerged in American law schools in the late 1970s and was associated with scholars including Duncan Kennedy, Roberto Unger, Mark Tushnet, and Karl Klare, offered a fundamental challenge to the prevailing understanding of law as a neutral set of rules separate from political and economic power. CLS scholars argued that law, including constitutional law, is inherently political: it reflects and legitimizes the power relations of the society in which it operates, it uses formal legal reasoning to make contingent political choices appear inevitable and neutral, and it serves the interests of the powerful while presenting itself as the servant of justice.

The CLS analysis, applied to the Indian Constitution, yields a particularly productive set of insights. The fundamental rights chapter, in its CLS reading, is not merely a set of protections for citizens against state power. It is a political document that reflects the balance of power in the Constituent Assembly: the civil and political rights that the educated professional class valued (freedom of speech, freedom of association, freedom of religion, equality before the law) are justiciable and strongly protected, while the social and economic rights that the rural and urban poor needed (rights to food, land, work, health, and shelter) are non-justiciable and weakly implemented. This is not a neutral choice about the nature of rights: it is a political choice that reflects the interests of those who held power in the constituent moment.

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The doctrinal development of Indian constitutional law, in its CLS reading, reveals a similar pattern. The expansion of Article 21 through judicial interpretation to include rights to livelihood, health, education, and environment is celebrated as progressive constitutional development, but in its CLS analysis it reveals a different dynamic: the Supreme Court expands constitutional rights through interpretation when doing so serves the interests of the middle class (the right to clean air in Delhi, the right to quality education in private schools, the right to privacy in digital communications) more consistently than when doing so would primarily serve the interests of the most marginalized (the right to land of adivasi communities, the right to work of informal laborers, the right to security of Muslim minorities in periods of communal violence).

The CLS critique does not deny the genuine achievements of Indian constitutional jurisprudence: the public interest litigation revolution of the 1980s, the expansion of social rights through Article 21, the basic structure doctrine's protection against constitutional self-destruction. But it demands that these achievements be assessed alongside the systematic constitutional failures that have accompanied them, and that the constitutional order's claim to be genuinely committed to justice be measured against the lived experience of those it claims to protect.

The CLS tradition's most productive contribution to the Indian constitutional reform agenda is its insistence that constitutional transformation requires not merely doctrinal change but institutional and cultural change. The reform of constitutional law is not enough if the institutions and cultures that implement it remain unchanged. A new constitution with strong social rights provisions will produce the same outcomes as the current directive principles if the courts that interpret them, the lawyers who argue them, and the administrators who implement them are drawn from the same social classes, trained in the same institutional traditions, and operating within the same political economy of power as before. Genuine constitutional transformation requires a transformation not only of the constitutional text but of the constitutional culture: the values, practices, and power relations that determine how the text is applied.

9.2 Postcolonial Jurisprudence and the Demand for Indigenous Constitutional Theory

The postcolonial jurisprudential tradition, represented in the Indian context by scholars including Upendra Baxi, Ratna Kapur, Rajeev Bhargava, and more recently Sudhir Krishnaswamy and Anupama Roy, offers a distinctive framework for constitutional analysis that goes beyond both the liberal constitutionalism of the mainstream and the Marxist institutionalism of the CLS tradition.

Postcolonial constitutional jurisprudence begins with the observation that constitutional theory as it has developed in Euro-American academic traditions is embedded in a particular historical experience (the development of the modern state in Western Europe and North America) and reflects particular assumptions about the relationship between individual and community, between state and civil society, between law and politics, that do not map directly onto the social realities of postcolonial societies. The concept of the individual rights-bearing citizen, which is the foundation of liberal constitutional theory, assumes a social context in which individuals have meaningful agency, in which the state is a relatively neutral arbiter of competing claims,

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and in which the legal system is accessible to those whose rights are violated. None of these assumptions holds in the Indian context for the majority of citizens.

Postcolonial jurisprudence demands a constitutional theory that is rooted in the actual social conditions of postcolonial India: the persistence of caste hierarchy, the colonial inheritance of the legal system, the structural marginalization of women, the complexity of religious and linguistic identity, and the ongoing experience of state violence against those who resist dispossession. Such a theory would generate different constitutional priorities: not the protection of individual liberty against an overreaching state (which assumes that the state is the primary threat to freedom) but the protection of collective communities against the combined power of the state, the market, and entrenched social hierarchies.

Upendra Baxi's concept of "trade-related, market-friendly human rights," developed in his critique of global human rights governance, is directly relevant to the Indian constitutional context. Baxi argues that the dominant trend in human rights development, globally and in India, is toward the prioritization of rights that facilitate market participation (property rights, contract rights, freedom of trade, intellectual property rights) at the expense of rights that challenge market outcomes (rights to work, to food, to shelter, to health, to a clean environment). The constitutional politics of structural adjustment in India, in which the economic liberalization of 1991 and subsequent years has been accompanied by the weakening of labor protections, the erosion of public services, and the transfer of public assets to private capital, reflects this prioritization of market-friendly over market-challenging rights. A postcolonial constitutional theory would reverse these priorities: it would subordinate the constitutional protection of market rights to the constitutional guarantee of the social and economic rights of the most vulnerable.

9.3 Republican Constitutional Theory and the Problem of Domination

Philip Pettit's republican theory of freedom, developed in his influential works "Republicanism" (1997) and "A Theory of Freedom" (2001), offers a conceptual framework for constitutional analysis that is particularly relevant to the Indian context. Pettit defines freedom not as the absence of interference (the negative liberty of the liberal tradition) but as the absence of domination: the condition of not being subject to the arbitrary will of another, of not being in a position where another can interfere with one's choices without accountability.

In Pettit's framework, a person is unfree not merely when she is actively interfered with but when she lives in conditions of domination: when another person or institution has the power to interfere arbitrarily with her life, whether or not it chooses to exercise that power at any given moment. The slave is unfree not only when beaten but at all times, because the master has the power to beat at will. The citizen living under an authoritarian state is unfree not only when arrested but at all times, because the state has the arbitrary power of arrest. The laborer working for a powerful employer without legal protections is unfree not only when fired but at all times, because the employer has arbitrary power over the employment relationship.

This republican concept of freedom as non-domination has significant implications for the constitutional analysis of the Indian state. The constitutional order of India creates numerous conditions of domination for its citizens: the police have the power of arbitrary arrest without

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genuine judicial supervision, state authorities have the power of arbitrary displacement without adequate accountability, the bureaucracy has the power of arbitrary discretion in the delivery of services without effective right to remedy, the dominant caste has the power of social violence against lower castes without adequate legal protection, and the employer has the power of labor exploitation without effective labor law enforcement.

From a republican constitutional perspective, the constitutional reform agenda requires not merely the protection of specific rights but the redesign of institutional power relations to eliminate conditions of domination. This means not merely enacting laws against arbitrary arrest but designing police institutions that structurally cannot exercise arbitrary power. Not merely providing a right to housing but designing land and housing institutions that structurally prevent landlords and the state from exercising arbitrary power over housing conditions. Not merely prohibiting caste discrimination but designing social institutions that structurally dismantle the power relations that make caste discrimination possible.

This is a demanding constitutional agenda. But it is the agenda that the evidence of seven decades of constitutional failure in India makes necessary. The failure of the Indian Constitution to deliver substantive freedom for the majority of its citizens is not, primarily, the failure of specific rights provisions. It is the failure of a constitutional design that has consistently prioritized the formal protection of individual rights over the structural transformation of the power relations that make genuine freedom impossible for the majority.

CHAPTER TEN: INDIA'S CONSTITUTIONAL FUTURE: BETWEEN REFORM AND RECONSTRUCTION

10.1 The 2024 Election and the Constitutional Moment That Was Not Used

The 2024 Indian general election, in which the BJP lost its absolute parliamentary majority for the first time since 2014 and became dependent on coalition partners to form a government, represented a potential constitutional moment: a democratic correction that could have initiated a genuine rethinking of the constitutional direction of the preceding decade.

The election result demonstrated the resilience of Indian democratic competition even under conditions of significant institutional disadvantage for opposition parties: the asymmetric access to media, the use of investigative agencies against opposition leaders, the financial advantages of the ruling party, and the management of electoral logistics by institutions whose independence was in question. That resilience is a genuine constitutional achievement and must be acknowledged.

But the constitutional potential of the 2024 election result has not been realized in the subsequent period. The ruling coalition has continued in office, coalition compulsions have moderated rather than reversed the constitutional direction of the previous government, and the opposition, divided among numerous parties with different constitutional agendas and different social bases, has not

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been able to develop a coherent constitutional reform program around which a broad democratic coalition could organize.

The fundamental problem is that constitutional reform requires not merely an opposition majority in Parliament but a popular constitutional movement: a broad civic mobilization that creates the political will for genuine transformation rather than merely electoral alternation. The anti-Emergency movement of 1977 was such a movement, at least in its mobilizing phase, though it was ultimately unable to convert its electoral victory into lasting constitutional transformation. The Anna Hazare movement of 2011 briefly resembled such a movement but was unable to develop a comprehensive constitutional reform agenda beyond the specific demand for a strong Lokpal. The broader civic constitutional movement that India needs has not yet emerged.

10.2 Learning from Global Constitutional Reform: Recent Developments

The global constitutional reform experience of the years 2020-2026 provides both models and warnings for the Indian constitutional future.

Chile's constitutional process, which involved the drafting of a new constitution by a fully elected and highly representative constituent assembly in 2021-2022, followed by the rejection of the first draft constitution in a referendum in September 2022 and the rejection of a second draft in December 2023, offers important lessons about the conditions for successful constitutional transformation. The Chilean case demonstrates that the constitutional reform process is as important as its product: the first draft constitution, which was extraordinarily ambitious in its social rights provisions, its Indigenous rights protections, and its feminist constitutional provisions, was rejected not because Chileans opposed these values but because the drafting process was dominated by the extreme left and produced a document that failed to command broad consensus. The second draft, controlled by the extreme right, was rejected for the opposite reason. Chile's constitutional transition thus far represents a constitutional failure, not a democratic success, and the lesson is that genuine constitutional transformation requires not merely a representative constituent assembly but a drafting process that is committed to genuine consensus rather than the imposition of one political faction's vision.

Poland's constitutional restoration process, initiated by the Tusk government after the 2023 election, illustrates the difficulty of undoing constitutional retrogression even when the political will for restoration exists. The PiS government's capture of the Constitutional Tribunal, the National Council of the Judiciary, and public media has created institutional facts that are extremely difficult to reverse within the existing constitutional framework, because the captured institutions themselves resist their own reform. Poland's experience in 2024-2026 of managing the paradox that constitutional restoration requires the use of the constitutional powers of the executive against institutions that claim constitutional protection is directly relevant to India: a future Indian government committed to constitutional restoration would face similar paradoxes in attempting to restore the independence of institutions that have been captured under their constitutional mandates.

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The experience of South Korea's constitutional crisis of 2024-2025, in which President Yoon Suk-yeol's declaration of martial law in December 2024 was rapidly reversed by parliamentary action and eventually led to his impeachment and removal by the Constitutional Court, demonstrates that constitutional resilience is possible even in contexts of concentrated presidential power, provided that the legislature, the courts, and civil society retain sufficient independence and capacity to respond to constitutional breakdown. The South Korean case offers a relatively optimistic lesson for constitutional democracies under stress: constitutional institutions that retain meaningful independence can, in a genuine constitutional crisis, reassert their authority and restore constitutional order.

India's constitutional situation in 2026 contains elements of both the Polish and the South Korean scenarios. Like Poland, India has experienced significant institutional capture that will be very difficult to reverse within the existing constitutional framework. Like South Korea, India retains democratic competition, judicial institutions with some meaningful independence (however compromised), and civil society organizations with the capacity and the will to resist constitutional erosion. The constitutional future depends, in significant measure, on whether the resilient elements of Indian constitutional democracy can generate the political will and the institutional capacity for genuine transformation before the captured elements solidify into irreversibility.

10.3 The Constitutional Imagination: What We Owe the Unborn Generations

Thomas Jefferson famously argued that the earth belongs to the living, that each generation has the right to govern itself under its own constitution, and that constitutions should be regularly revisited and renewed rather than treated as eternal instruments binding subsequent generations. Jefferson's proposal that constitutions expire every nineteen years (his estimate of the period before a complete generational turnover) was never adopted, even by the United States whose First Amendment freedom and whose constitutional dynamism he celebrated. But his underlying insight, that constitutional legitimacy requires the ongoing consent of the governed rather than merely the historical consent of the founders, remains powerful.

India's Constitution was adopted in 1950 by a generation that has now passed entirely from the scene. The children who were born in 1950 are now in their seventies; the majority of the Indian population was born after the Constitution was adopted and has never participated in any constitutional moment that could be described as a genuine act of popular constituent power. The question of constitutional legitimacy for a document of this age and of this provenance, written by an unrepresentative elite, never ratified by popular referendum, and maintained by processes of amendment that are controlled by the very actors whose power it should constrain, is a question that intellectual honesty requires to be taken seriously.

The constitutionally relevant claim on behalf of future generations is not merely that they have interests that the current constitutional order fails to protect (though they do: the environmental provisions of the Constitution are inadequate, the fiscal sustainability of current state commitments is questionable, and the constitutional management of climate-related displacement is completely absent). It is the more fundamental claim that each generation of Indian citizens deserves the opportunity to constitute itself as a political community under a constitutional

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framework that it has genuinely chosen, that reflects its values, and that is designed for its conditions rather than for the conditions of a colonial transition three-quarters of a century ago.

The argument for a new constitution is, in its deepest form, this argument of democratic self-determination: the claim that a people genuinely committed to constitutional governance owes itself, and owes its children, a constitutional framework that is genuinely its own, genuinely reflecting its history, its diversity, its aspirations, and its values, rather than the amended residue of a colonial administrative statute.

This argument is not a counsel of despair. It is an expression of the highest constitutional aspiration: the belief that the people of India, with all their diversity, their conflicts, their genius, and their suffering, are capable of designing a constitutional order that is genuinely worthy of the name. The evidence analyzed in this textbook is that the existing constitutional framework has failed, in too many ways and for too many people, too consistently and too systematically, to justify complacency about its continuation. The evidence of democratic resilience, civic energy, and constitutional aspiration that is equally visible in India's political life suggests that the people are ready for the constitutional conversation that their political leaders have been unwilling to initiate.

That conversation is the purpose of this textbook: not to provide answers but to insist that the questions be taken seriously, by scholars, by citizens, by politicians, and by the generation of constitutional reformers that the evidence analyzed here makes urgently necessary.

CONCLUDING COMMENTARY TO PART THIRTEEN: TOWARD A THEORY OF CONSTITUTIONAL ACCOUNTABILITY

The thirteen parts of this textbook have together built a comprehensive account of the Indian Constitution as a document of extraordinary ambition and profound structural failure. Part Thirteen has addressed the deepest dimension of that failure: the political economy of constitutional design, the systematic victimization of citizens by the constitutional state, the corruption that the constitutional architecture enables and conceals, the oligarchic capture of constitutional institutions, the nationalist turn that is converting a secular democratic constitutional order into an instrument of majoritarian domination, and the theoretical frameworks within which genuine constitutional transformation might be conceived and pursued.

The central theoretical contribution of Part Thirteen is the concept of constitutional accountability, understood not merely in its conventional sense of accountability of government actors to constitutional norms but in the deeper sense of the constitutional order's accountability to the people it governs. A constitutional order that is not accountable to the governed, that does not deliver on the rights it promises, that systematically victimizes the most vulnerable while protecting the most powerful, that has been captured by political and economic elites at the expense of the majority, and that perpetuates colonial structures of domination in the name of democratic governance has forfeited its claim to constitutional legitimacy in the deepest sense.

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The accountability deficit of the Indian constitutional order is the deficit analyzed throughout this textbook: the gap between constitutional text and constitutional reality that is both the measure of constitutional failure and the imperative for constitutional reform. Closing that gap requires, at minimum, the fundamental structural reforms identified in Chapter Seven of this Part. Whether closing it also requires the more radical step of a new constitution, designed through a genuinely representative constituent process, is the question that the evidence of this textbook poses and that the Indian people must ultimately answer.

But the answer cannot be given by those who currently benefit from the constitutional order's accountability deficit. It must be given by those who have paid its cost: by the dalit laborer who cannot access justice, by the adivasi community whose land has been taken without adequate remedy, by the Muslim citizen who lives under the shadow of civic exclusion, by the woman who lives under personal laws that discriminate against her, by the journalist who cannot report freely, by the young person who cannot get an education adequate to their abilities because the constitutional guarantee of educational equality has not been implemented, and by every citizen who has been promised by the constitutional text a level of dignity, freedom, and justice that the constitutional reality has consistently denied.

This textbook is, in the final analysis, an act of solidarity with those citizens. It is an act of solidarity that takes the form of rigorous constitutional analysis rather than mere political advocacy, because the problems diagnosed here are constitutional problems that require constitutional solutions, and constitutional solutions require constitutional understanding. The hope of this textbook is that understanding, honestly pursued, will be a contribution to the constitutional transformation that the evidence of seven decades demands.

Part Thirteen ends. Part Fourteen will address: The Constitutional Transformation of Judicial Power: From Accountability to Supremacy, examining the evolution of the Supreme Court from constitutional guardian to constitutional actor, the relationship between judicial activism and democratic accountability, the crisis of judicial appointments and the collegium system's failures, the backlog crisis and access to justice emergency, judicial ethics and the accountability vacuum, international comparisons of judicial power and democratic legitimacy, and the theoretical frameworks of judicial constitutionalism and its democratic limits.

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PART FOURTEEN: THE CONSTITUTION AS INSTRUMENT OF DOMINATION

Nationalism, Victimhood, Power Asymmetry, and the Case for Constitutional Reconstruction

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PREFACE TO PART FOURTEEN

Every part of this textbook has, in its own way, been preparing the reader for the argument that this part makes directly and without apology. The argument is this: the Constitution of India, through its structural design, its colonial inheritances, its interpretive traditions, its institutional dysfunctions, and its accumulated history of misapplication, has operated not as a charter of freedom for the people of India but as an instrument of domination over them. It has concentrated power in the hands of the few, dispersed vulnerability across the lives of the many, enabled the criminalization of dissent, subsidized the exploitation of the poor, empowered the prejudices of the majority, abandoned the rights of minorities, corrupted the institutions of governance, degraded the quality of democracy, poisoned the relationship with neighboring states, and provided the legal scaffolding within which a genuinely authoritarian political project has been constructed in broad daylight.

These are large claims. They deserve large arguments. This part provides them.

We will examine, across four substantive chapters, the following dimensions of the problem. The first chapter takes on the question of constitutional nationalism: how the structure of the Constitution has enabled and accelerated the transformation of Indian politics from a plural, competitive, multi-ideological democracy into an increasingly majoritarian, Hindu-nationalist political order in which the constitutional identity of the state is being contested and in important respects already transformed. The second chapter examines the citizen as constitutional victim: how the ordinary people of India, particularly the poor, the marginalized, the minority, and the dissenting, have not been beneficiaries of the constitutional order but its casualties. The third chapter addresses the catastrophic consequences of constitutional power asymmetry: the failure to distribute power genuinely and equitably between the centre and the states, between elected governments and unelected institutions, between men and women, between upper castes and lower castes, between the formal economy and the informal majority. The fourth chapter

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confronts India's constitutional failure in foreign policy and regional relations: how the structural design of the Constitution, the mindset it embeds about sovereignty and security, and the political culture it has produced have made India a difficult, suspicious, and often aggressive neighbor in a region that desperately needs cooperative governance.

Throughout, we will draw on the most recent scholarship: on Gautam Bhatia's 2025 constitutional analysis, on Christophe Jaffrelot's work on Hindu nationalist constitutionalism, on the V-Dem Democracy Report 2024 and 2025, on the Supreme Court's own contradictions as revealed in recent landmark judgments, on the Human Rights Watch World Report 2025 on India, on the International Court of Justice proceedings concerning Indian state conduct in cross-border contexts, and on the comparative constitutional scholarship that allows us to see India's failures not as unique but as variations of a global pattern of constitutional capture that has been theorized with increasing sophistication.

And we will conclude with the argument that this textbook has been building toward from its opening pages: that India needs not merely constitutional reform but constitutional replacement. That a document built on colonial architecture, drafted by an elite assembly without universal constituent participation, interpreted for seven decades in ways that have consistently favored state power over citizen liberty and upper-class interests over lower-class welfare, and now being actively weaponized in service of an ethno-nationalist political project, cannot be repaired by amendment. It must be rethought from first principles, by a genuinely representative constituent process, with the full participation of the people in whose name it claims to govern.

CHAPTER ONE: THE CONSTITUTIONAL PRODUCTION OF NATIONALISM

The Constitution, Majoritarian Politics, and the Erosion of Democratic Pluralism

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1.1 The Theoretical Framework: How Constitutions Produce Political Cultures

Constitutional theory in the twenty-first century has moved well beyond the positivist understanding of a constitution as merely a set of legal rules that govern the structure of government. Contemporary scholars, drawing on the work of thinkers from Hannah Arendt through Jurgen Habermas to more recent constitutional theorists like Roberto Unger, Ran Hirschl, and Kim Lane Scheppele, understand constitutions as performative documents: they do not merely describe political reality but actively produce it. Constitutions shape political culture by the categories they create and the categories they exclude. They determine which identities receive constitutional recognition and which are rendered invisible. They establish which forms of political argument count as legitimate and which do not. They create the emotional and symbolic landscape within which national identity is contested and ultimately settled.

From this theoretical perspective, the question of whether the Indian Constitution is "secular" or "Hindu" is not simply a question of textual interpretation. It is a question about the constitution-

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making process, the social interests that process reflected, the ideological framework within which the constitutional text was written, the political culture that the constitutional structure incentivizes, and the relationship between constitutional design and the dynamics of electoral competition in a society stratified by religion, caste, class, language, and region.

The dominant view of the Indian Constitution in the legal academy is that it is a secular document committed to the equal treatment of all religious communities. This view points to Article 25, which guarantees freedom of conscience and free profession, practice, and propagation of religion to every person. It points to Article 14, which guarantees equality before the law to all persons regardless of religion. It points to the Preamble, which uses the word "secular" (inserted by the Forty-Second Amendment in 1976, under Emergency conditions, it must be noted). It points to Article 15, which prohibits discrimination by the state on grounds of religion.

These provisions are real. But they coexist, in the same constitutional text, with provisions that are anything but equally secular in their practical operation. Article 370, now abrogated, gave the Muslim-majority state of Jammu and Kashmir a special constitutional status that the Hindu nationalist movement regarded as a mark of Muslim political privilege and spent decades demanding the abolition of. The personal law provisions of the Constitution, recognized in Article 25 and protected by the absence of a Uniform Civil Code (despite Article 44's directive to the state to endeavor to secure one), mean that Hindu, Muslim, Christian, and Parsi citizens are governed by different personal laws in matters of marriage, divorce, inheritance, and adoption. This differential treatment has been a source of sustained political controversy.

The reservation system, while based on caste rather than religion, operates in ways that systematically affect religious communities differently: Muslims, who are disproportionately represented among backward castes and OBCs but who are constitutionally excluded from the Scheduled Caste reservations that are limited to Hindus, Sikhs, and Buddhists under the Presidential Order of 1950, occupy a legally subordinate position in the reservation framework that reflects the communal politics of the Constituent Assembly period. This exclusion has never been constitutionally corrected, despite repeated recommendations by commissions including the Sachar Committee Report of 2006, which documented the comprehensive socioeconomic deprivation of Muslim communities in India.

The constitutional structure thus contains within it tensions, asymmetries, and ambiguities regarding religious identity and state neutrality that have provided the raw material for decades of communal politics and that have ultimately enabled the rise of a political movement dedicated to the explicit Hinduization of the state. Understanding this requires attention to what Ran Hirschl has theorized as "constitutional theocracy": a constitutional arrangement that formally maintains secular structures but that systematically advantages the majority religious community through a combination of explicit provisions, interpretive choices, institutional design, and political culture.

1.2 How the Constitution Enabled Hindu Nationalism: A Structural Analysis

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The BJP's rise to power in 2014 and its consolidation of a dominant position in Indian politics through 2024 is not simply a consequence of electoral strategy, economic grievance, or the failures of the Congress party. It is also a consequence of structural features of the Indian constitutional order that made majoritarian mobilization along Hindu identity lines politically rational and constitutionally viable.

The first structural enabler is the first-past-the-post electoral system. As noted in Part Two of this textbook, the FPTP system rewards parties with concentrated geographical support and with the ability to consolidate a large minority of votes into a parliamentary majority. In India's context, where Hindus constitute approximately 79 percent of the population and where Hindu identity can be mobilized across regional, linguistic, and caste lines through the politics of communal threat and cultural pride, FPTP creates powerful incentives for Hindu nationalist electoral mobilization. A party that can consolidate even 35 to 40 percent of Hindu voters behind a unified identity claim will, under FPTP, win an overwhelming parliamentary majority. The BJP in 2019 won 303 seats with approximately 37 percent of the popular vote. This is not Hindu nationalist success in spite of the electoral system. It is Hindu nationalist success because of the electoral system.

The second structural enabler is the absence of constitutional regulation of political parties. As this textbook has argued repeatedly, the Constitution's silence on internal party democracy, candidate selection processes, and political finance has allowed the BJP to become an organization that is effectively controlled by the RSS (Rashtriya Swayamsevak Sangh), an organization whose commitment to Hindu nationalist ideology predates the BJP's existence and whose cadre structure provides the electoral machinery that the BJP deploys in every election. The RSS is not a political party and is therefore not subject to the political finance disclosure requirements that apply to parties. The constitutional silence on the relationship between ideological organizations and political parties has allowed the most organized and ideologically coherent force in Indian civil society to operate as the de facto governing power of the Indian state while maintaining a nominal separation from the formal party and government structures.

The third structural enabler is the capacity of Article 356 and related emergency powers to be used to discipline states that resist the central government's religious and cultural agenda. The use of President's Rule against state governments that maintain political environments hostile to BJP's Hindu nationalist politics has been a systematic feature of Indian political history, documented most extensively in Balveer Arora's and Rekha Saxena's comparative studies of center-state relations, and more recently in the Supreme Court's 2023 landmark judgment in the J and K Reorganization case, where the Court's upholding of the 2019 abrogation of Article 370 using constitutional processes that bypassed any genuine representative consent from the state being reorganized demonstrated that the Constitution's emergency powers can be used to effect fundamental changes in the constitutional status of a state without the agreement of its people.

The fourth structural enabler is the appointments process for constitutional bodies. The Election Commission of India, the body responsible for administering elections, is constituted by appointment of the President (in practice, the Cabinet) under Article 324. Until 2023, when the Supreme Court intervened in Anoop Baranwal v. Union of India to require a selection committee process, Election Commissioners were appointed entirely at the discretion of the executive. The

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Law Commission's 255th Report had recommended reform of the appointment process as far back as 2015. The BJP government resisted this reform for nearly a decade, during which the Election Commission under its appointed commissioners was criticized on multiple occasions for decisions that appeared to favor the ruling party: in the timing of elections, in the allocation of campaign time, in the enforcement of the Model Code of Conduct, and in the granting of split-party recognition in contested intraparty disputes.

The fifth and perhaps most profound structural enabler is what Christophe Jaffrelot has called the "ambivalence of Indian secularism." The Indian state has historically practiced what its critics call "pseudo-secularism": differential treatment of religious communities that privileges Hindu religious practices in public life (the state organization of Hindu temple management, the scheduling of public holidays, the treatment of cow slaughter as a special category of crime in most state laws) while formally claiming the neutrality required by its constitutional commitment to secularism. This ambivalence has given Hindu nationalist politicians a powerful argument: that the secular Constitution has been applied asymmetrically in favor of minorities and against Hindus, and that the correction of this asymmetry requires a more explicitly Hindu-centric constitutional interpretation or, ultimately, a new Hindu constitution.

1.3 The Abrogation of Article 370 as a Constitutional Event: Nationalism Triumphant Over Federalism

The abrogation of Article 370 on August 5, 2019 is the most significant constitutional event in India since the Emergency of 1975. It deserves extended analysis here because it represents the intersection of every theme this chapter has been developing: the structural enablers of Hindu nationalism in the constitutional order, the use of constitutional emergency powers to override the representative consent of a constituent unit, the transformation of a state with a Muslim majority into Union Territories, and the deployment of constitutional language to accomplish what is, in substance, a political subjugation.

Article 370 was a temporary provision, as the Constitution's own text described it, inserted in 1949 to accommodate the special circumstances under which the state of Jammu and Kashmir had acceded to India after the Partition. It gave Jammu and Kashmir a special constitutional status: the Constitution of India applied to the state only with modifications specified in a separate Constitution of Jammu and Kashmir, the state had its own constituent assembly and constitution, and changes to Article 370 required the concurrence of the Constituent Assembly of Jammu and Kashmir (and, after its dissolution, the state legislature).

The abrogation of Article 370 in 2019 was accomplished through a sequence of constitutional steps that was creative to the point of being, in the view of many constitutional scholars, fraudulent. The President of India used the powers of Article 356 (President's Rule, which had been imposed on Jammu and Kashmir in 2018) to act in place of the state legislature. The President then issued an order amending the Presidential Order on the application of the Constitution to Jammu and Kashmir, effectively applying the entire Constitution of India to the state without the modifications that Article 370 had required. The Parliament then passed the Jammu and Kashmir Reorganization Act, bifurcating the state into two Union Territories: Jammu

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and Kashmir (with a legislature) and Ladakh (without a legislature), thereby stripping the region of its statehood.

The Supreme Court upheld this procedure in December 2023 in In re: Article 370 of the Constitution. The Court's majority opinion, written by Chief Justice D.Y. Chandrachud, held that the President could exercise the powers of the state legislature under Article 356, that Article 370 was a "temporary provision" that Parliament could abrogate, and that the conversion of Jammu and Kashmir from a state to Union Territories was constitutionally permissible.

The constitutional law dimensions of this judgment are extraordinarily complex and contested, and they have been analyzed extensively by scholars including Anupama Roy, Suhrith Parthasarathy, and Gautam Bhatia, whose analysis in his 2025 work is particularly penetrating. The key critique, stated as simply as possible, is this: the Constitution provides that changes to the special status of Jammu and Kashmir require the concurrence of the state's own representative assembly, not merely the action of the central government. The central government deliberately kept the state under President's Rule at the moment of abrogation precisely so that it could act in place of the state assembly, using federal emergency powers to override the very requirement of state consent that those powers should not have been available to circumvent. The Supreme Court's approval of this procedure amounts to endorsing the proposition that a constitutional requirement of consent can be evaded by first removing the institutional body whose consent is required and then proceeding without it.

For the purposes of this chapter's argument, the significance of the Article 370 episode is not primarily about Jammu and Kashmir. It is about what the episode reveals regarding the relationship between constitutional structure and political nationalism. The Constitution of India contains, within its emergency powers and its provisions for state reorganization, sufficient flexibility to allow a determined central government with a parliamentary majority to fundamentally alter the constitutional position of any state, to convert it from a full state into a Union Territory, and to do so without the genuine consent of the population affected. This is a structural feature of the Constitution that is deeply inconsistent with democratic federalism and that is, in the current political environment, available for deployment by a nationalist government against any region, community, or constituency that it identifies as insufficiently loyal to the national project as it defines that project.

1.4 The Citizenship Amendment Act and the Constitution's Secular Fragility

The Citizenship Amendment Act, 2019 (CAA) offered expedited citizenship to refugees from Afghanistan, Bangladesh, and Pakistan who belonged to Hindu, Sikh, Buddhist, Jain, Parsi, and Christian religious minorities, but explicitly excluded Muslims. The Act was challenged in the Supreme Court, and as of 2026 the challenge is still pending a final determination, though the government implemented the Act through rules notified in March 2024, in the run-up to the 2024 general elections.

The constitutional challenge to the CAA is based on the argument that it violates Article 14 (equality before the law) because it discriminates among refugees on the basis of religion. The government's defense is that the classification is rational: the specified religious communities

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face persecution in specifically Muslim-majority countries, and the exclusion of Muslims from those countries from the Act's benefits is based on the absence of religious persecution of Muslims in Muslim-majority states.

This argument is flawed on multiple levels that have been extensively documented by constitutional scholars. First, it ignores the persecution of Ahmadiyyas, Shias, Hazaras, and other Muslim minorities within the three specified countries, who do not receive the benefit of the Act despite being subject to precisely the kind of religious persecution it claims to address. Second, it creates a category of citizenship acquisition that is expressly linked to religious identity, which is precisely what the Constitution's commitment to secularism and its prohibition of religious discrimination in state action are meant to prevent. Third, it must be read in conjunction with the National Register of Citizens (NRC) and the National Population Register (NPR) processes, which create a mechanism through which non-documented residents would need to prove their citizenship and under which those who cannot would be left stateless. Critics have argued, with substantial documentation, that the combination of CAA and NRC creates a framework in which Muslims who cannot prove their citizenship will be rendered stateless, while Hindus in the same position will have a path to regularization through CAA.

The Supreme Court's delay in deciding the challenge to CAA, which was filed in 2019 and has now been pending for more than six years, is itself a constitutional comment. Constitutional challenges to legislation as potentially momentous as CAA should be decided within months, not years. The indefinite delay in adjudication of fundamental constitutional questions, which is a recurring feature of the Indian Supreme Court's handling of politically sensitive cases, functions as a de facto legitimation of legislation whose constitutional validity has not been established. Legislation that is constitutionally invalid but has been in operation for years, with citizenship and residency decisions having been made under its authority, becomes progressively more difficult to unwind even if it is ultimately struck down.

This pattern of judicial delay in politically sensitive constitutional cases, documented in scholarly detail by Abhinav Chandrachud and Nick Robinson, is not random. It reflects a structural reality: that Supreme Court judges are appointed by a process controlled by the government, that they serve until the age of sixty-five, and that their post-retirement career prospects are significantly influenced by the government they adjudicated during their tenure. This structure creates subtle but powerful incentives for judicial caution on the most politically salient constitutional questions, incentives that are not corrupting in any crude sense but that systematically bend the arc of constitutional adjudication toward accommodation of executive power.

1.5 Constitutional Jurisprudence and the Grammar of Exclusion

The Indian Supreme Court has not been a passive participant in the production of the constitutional nationalism that this chapter is analyzing. It has been, at various points, both a resistor of and a contributor to that nationalism. The doctrinal landscape of the Court's decisions on religion-related constitutional questions is internally contradictory in ways that reflect the deep ambivalences of the Constitution itself.

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On one hand, the Court has made landmark judgments expanding the constitutional protection of religious minorities. Navtej Singh Johar v. Union of India (2018), which decriminalized homosexuality and grounded the decision in the constitutional rights to dignity, privacy, and non-discrimination, is a genuinely progressive decision. The privacy judgment in K.S. Puttaswamy v. Union of India (2017) recognized privacy as a fundamental right with implications for religious and personal identity. S.R. Bommai v. Union of India (1994) firmly established secularism as part of the basic structure of the Constitution.

On the other hand, the Court has also delivered judgments that have enabled or legitimized majoritarian pressures. The Ayodhya judgment of November 2019, formally titled In re Babri Masjid, awarded the disputed religious site at Ayodhya to the Hindu petitioners despite the Court's simultaneous finding that the demolition of the Babri Masjid in 1992 was an illegal act and that the Muslim petitioners' title to the site had not been defeated by adverse possession. The Court's reasoning, that the site should be given to those who held it in "faith" as their sacred place, is jurisprudentially novel to the point of being without precedent in any comparable legal system and can be understood within the framework of what sociologist of religion Jose Casanova calls "the asymmetric treatment of majority and minority religious claims by formally secular states."

The judgment was widely celebrated in Hindu nationalist political circles and widely criticized by constitutional scholars, including a detailed critique by Gautam Bhatia arguing that the judgment substituted religious sentiment for legal title and that the remedy it fashioned was incompatible with the constitutional prohibition of religious discrimination. But the judgment was unanimous. Not a single judge dissented. This unanimity in a five-judge bench of the Supreme Court on a judgment that was deeply controversial among constitutional scholars is itself a constitutionally significant fact about the relationship between judicial independence and political pressure in contemporary India.

The pattern continues in a different form in the Court's approach to cases involving the demolition of Muslim-owned property by state governments as a form of extrajudicial punishment following communal violence or criminal accusations. In 2025, the Supreme Court was required to intervene in cases from multiple states where local BJP governments had used municipal demolition powers to demolish the homes and shops of persons accused (not convicted) of involvement in communal violence or other offenses. The Court issued a general direction in November 2024 restricting the use of demolition powers as a form of punishment without judicial process, and in March 2025 it issued further directions in what has been called the Bulldozer Justice cases.

The very fact that the Supreme Court had to intervene at the level of general constitutional directions to prevent state governments from using municipal law to demolish Muslim-owned properties as a form of religiously targeted extrajudicial punishment indicates how far the constitutional crisis around Hindu nationalism has progressed. The Constitution's formal guarantees of equality and due process are still formally in force. But they require sustained judicial vigilance to prevent executive violation, and that vigilance has not been consistently forthcoming.

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1.6 The RSS's Proposed Hindu Constitution: Nationalism's Ultimate Constitutional Project

The most direct expression of Hindu nationalism's relationship to the Constitution of India is the documented project, advanced by the intellectual wing of the Sangh Parivar, to replace the current Constitution with a new constitution grounded in Hindu civilizational values. As senior advocate Rajeev Dhavan noted in his January 2025 lecture at the India International Centre, there is a 501-page report prepared by Sangh-affiliated intellectuals proposing the replacement of the present constitution with what its proponents describe as a "Hindu constitution."

The content of this proposal, as documented in academic analyses by scholars including Chetan Bhatt, is deeply revealing of the constitutional worldview that would replace the current order if Hindu nationalism achieves complete political dominance. The proposed framework involves the subordination of secular individual rights to community-based rights defined along Hindu cultural lines, the elimination or radical reduction of minority protections and reservation frameworks, the replacement of the secular state's relationship to religion with a state explicitly committed to the promotion of "Sanatan Dharma," the reconceptualization of citizenship in terms of cultural nationality ("Hinduness") rather than territorial birth or naturalization, and the restructuring of the judiciary to reduce its capacity to invalidate laws passed by the Hindu nationalist legislature.

This proposal is not currently government policy. But it exists. It circulates. It informs the political imaginary of the movement that has governed India since 2014. And it must be understood, in constitutional terms, as the logical endpoint of a constitutional trajectory that has been visible since at least 1989, when the Ram Janmabhoomi movement began its sustained campaign to use electoral democracy to achieve the cultural and political transformation of the Indian state. The Constitution's current vulnerabilities, the ones this textbook has been documenting throughout, are not incidental to this trajectory. They are its conditions of possibility.

CHAPTER TWO: THE CITIZEN AS CONSTITUTIONAL VICTIM

How the People of India Have Been Systematically Failed, Exploited, and Criminalized by the Constitutional Order They Were Promised

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2.1 The Promise and the Reality: A Seventy-Five-Year Balance Sheet

When the Constitution of India came into force on January 26, 1950, its Preamble made a solemn commitment: to secure for all citizens justice, social, economic and political; liberty of thought, expression, belief, faith and worship; equality of status and opportunity; and to promote fraternity assuring the dignity of the individual and the unity and integrity of the Nation. These are not modest promises. They are, taken together, the commitment of a constitutional order to the complete transformation of a society that was, at the moment of independence, among the

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most unequal, most impoverished, most socially stratified, and most institutionally underdeveloped in the world.

Seventy-five years later, the balance sheet of this commitment is mixed in ways that its most ardent defenders celebrate and that its most honest assessors acknowledge as deeply troubling.

India has achieved real things. Its economy is, by aggregate measure, the fifth largest in the world. Its democracy has held elections without constitutional collapse for more than seven decades. Its institutions of higher learning produce world-class scientists and engineers. Its constitution has provided the framework within which one of the world's largest reservations programs has created significant upward mobility for historically excluded caste groups. Its Supreme Court has, on many occasions, stood between citizens and the overreach of state power.

But the people who are not educated engineers, who do not litigate in the Supreme Court, who do not live in urban apartments but in rural villages without piped water, who do not earn in formal employment but in the informal economy without labor protections, who are not Brahmin or upper-caste but Dalit, Adivasi, or Muslim, who are not men but women in a society where gender-based violence is epidemic and where gender equality remains a constitutional aspiration rather than a social reality: for these people, the balance sheet looks very different.

The Human Rights Watch World Report 2025 on India documents the following: continued use of the Unlawful Activities (Prevention) Act to hold journalists, academics, and activists in pre-trial detention for years; systematic targeting of Muslim-owned properties for demolition by state governments without due process; violence against Dalit communities, including caste-based atrocities that increased in reported incidence in 2023 and 2024; severe restrictions on press freedom that saw India ranked 161 out of 180 countries in the 2024 Reporters Without Borders Press Freedom Index; online surveillance and internet shutdowns that repeatedly targeted Kashmir, Manipur, and regions of ongoing social unrest; and the continued use of sedition provisions (now technically under the Bharatiya Nyaya Sanhita's equivalent provisions after the IPC's replacement in 2023) against critics of the government.

The V-Dem Democracy Report 2025 classified India as an "electoral autocracy" for the third consecutive year, meaning that while India holds elections that are formally competitive, the conditions for those elections are significantly compromised by the subordination of democratic institutions to the ruling party, restrictions on civil society, limitations on press freedom, and the use of state power to disadvantage political opponents.

These are not the reports of marginal critics. V-Dem is an academic project based at the University of Gothenburg, among the most methodologically sophisticated in comparative democracy studies. Human Rights Watch is a respected international human rights organization. Their findings do not represent anti-India bias. They represent the application of consistent global standards to Indian conditions, and the result is a constitutional indictment of the gap between the promise and the reality of India's constitutional order.

2.2 The Poor and the Constitution: A Relationship of Structural Violence

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The relationship between the Indian constitutional order and the poor is the most important and most neglected dimension of constitutional critique. Constitutional scholarship in India has been disproportionately preoccupied with high-level institutional questions: the separation of powers, the federal balance, the scope of fundamental rights in their most philosophically interesting formulations, the doctrinal evolution of the basic structure. These are important questions, but they are not the questions that matter most to the approximately 200 million Indians who were living in multidimensional poverty according to the UNDP's 2023 India National Multidimensional Poverty Index.

For these citizens, the Constitution's relevance is not primarily as a set of guarantees they can enforce in the Supreme Court. It is as the legitimating document of a state that taxes them, conscripts them, regulates them, polices them, displaces them, and occasionally kills them, while delivering to them a fraction of the services it promises and a fraction of the justice it guarantees.

Consider the experience of the rural poor with the land acquisition system. The constitutional framework governing land acquisition is complex: it involves Article 300A (the constitutional right to property), the Land Acquisition Act (replaced in 2013 by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act), and the fundamental rights provisions that constrain state action. The theory is that the state may acquire private land for public purposes, but must pay fair compensation and, under the 2013 Act, must obtain the consent of a majority of affected land holders for acquisitions for private sector projects.

The practice is different. Acquisition of land from poor rural communities, especially Adivasi communities whose relationship to land is collective and customary rather than formally titled and individual, has been one of the most persistent and documented forms of constitutional victimization of the poor in India. The World Bank's India country report of 2023 estimated that development-related displacement in India has affected between 40 million and 50 million people since independence, with approximately 40 percent of those displaced being from Scheduled Tribe communities who constitute only 8 percent of the national population. This massively disproportionate displacement is not accidental. It reflects the fact that Adivasi communities live on lands that the state needs for mining, large dams, industrial corridors, and national parks, and that the constitutional and legal frameworks for their protection have been systematically inadequate.

The Forest Rights Act of 2006 (formally the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act) was a significant legislative effort to correct one dimension of this constitutional failure: the failure to recognize the customary rights of Adivasi communities over forest land. But its implementation has been deeply inadequate. The Supreme Court's 2019 order in Wildlife First v. Ministry of Forest and Environment, which initially directed the eviction of millions of forest dwellers whose rights claims had not been recognized and then stayed its own order after significant public protest, illustrated both the constitutional fragility of Adivasi land rights and the capacity of civil society mobilization to create temporary judicial protection for those rights.

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The deeper problem is structural. The constitutional order recognizes individual private property rights with significant legal force, while treating collective customary rights as secondary, dependent on state recognition, and subject to easy override for "public purposes" defined by the state rather than the affected communities. This asymmetry in the constitutional treatment of different forms of property is not politically neutral. It reflects the interests of the propertied classes who dominated the Constituent Assembly and who had no personal stake in protecting collective customary tenure over land they did not hold.

2.3 Custodial Violence, Preventive Detention, and the Constitution's Brutal Face

Perhaps no dimension of the Indian constitutional order's relationship to ordinary citizens is more revealing of its true character than the legal framework governing police powers, preventive detention, and custodial treatment. This is the dimension of the state that the majority of India's poor and marginalized citizens are most likely to encounter personally, and it is the dimension in which the colonial foundations of the constitutional order are most visible and most brutal.

The colonial police force in India was not designed to protect citizens from crime. It was designed to maintain the order of the colonial state, to suppress political dissent, to protect property, and to enforce the social hierarchy that the colonial economy depended on. The Police Act of 1861, enacted in the aftermath of the 1857 uprising, created a police structure that was hierarchical, centralized, militarized, and explicitly oriented toward control rather than service. This Act, in large measure, remains in force in most Indian states today, more than one hundred and sixty years after its enactment.

The constitutional treatment of the police is revealing. Article 246 places "public order" and "police" on the State List, meaning that the organization and operation of the police is constitutionally a state responsibility. But no provision of the Constitution establishes any rights of citizens against police action beyond the procedural protections of Articles 20, 21, and 22. There is no constitutional provision establishing accountability mechanisms for the police. There is no constitutional right to a police service that is free from corruption, discrimination, or violence. The Constitution treats the police as an institution of governance rather than as a service to citizens, and this treatment reflects and reinforces the institutional culture of a police force that still operates, in significant measure, as a tool of social control rather than a protector of citizen rights.

The consequence is a police system that is, by any international measure, extraordinarily prone to custodial violence. The National Campaign Against Torture documented 195 custodial deaths in India in 2023, and noted that this almost certainly understates the actual toll because many custodial deaths are not reported or are attributed to "natural causes." The National Human Rights Commission, a constitutional body established under the Protection of Human Rights Act 1993, has issued guidelines and recommendations regarding custodial violence repeatedly over three decades, with minimal effect on police practice in most states.

Preventive detention, which allows the state to imprison a person without trial for extended periods on the ground of preventing future conduct rather than punishing past conduct, is a particularly egregious feature of the constitutional framework. Article 22 permits preventive

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detention for up to three months without bail, without the right to be represented by a lawyer of one's choice before the Advisory Board reviewing the detention, and without the requirement to disclose the grounds of detention if the state considers such disclosure against the public interest. Successive legislation has extended and elaborated the preventive detention framework: the National Security Act 1980, the Prevention of Money Laundering Act 2002 (whose detention provisions are among the most expansive in the statutory framework), and above all the Unlawful Activities (Prevention) Act 1967 as amended in 2019.

The UAPA 2019 amendment was among the most significant expansions of preventive detention power in Indian constitutional history. It allows the designation of individuals as "terrorists" without any judicial process, and individuals so designated may be detained under provisions that substantially curtail the procedural protections of Article 22. The practical effect is that persons designated as terrorists under UAPA may be held in pre-trial detention for years while their cases are in courts that are chronically backlogged. The People's Union for Civil Liberties and the Arrested Lawyers Initiative have documented numerous cases where journalists, academics, and activists, including Professor G.N. Saibaba, Sudha Bharadwaj, Gautam Navlakha, and the Bhima Koregaon accused (among others), have been held in pre-trial detention for years under UAPA on the basis of evidence that has been extensively contested and, in several cases, found to be fabricated.

The constitutional dimensions of these cases are clear and damning. Article 21 guarantees the right to life and personal liberty. Article 22 provides specific procedural protections for detained persons. Article 39A requires the provision of free legal aid. Article 14 guarantees equal protection of the law. None of these provisions has been adequately enforced in the cases of UAPA detainees, because the statutory framework of UAPA as interpreted by the courts has created a zone of administrative preventive detention that is functionally insulated from constitutional scrutiny.

The National Investigation Agency Act 2008 and the Enforcement Directorate's operational expansion under the PMLA have created parallel investigation and prosecution machinery with even more expansive powers: the NIA can investigate cases nationwide without state government consent, and the ED operates with reversed presumptions of innocence in money laundering cases that conflict with the constitutional presumption against self-incrimination. The Supreme Court upheld the ED's bail-denial provisions under PMLA in Vijay Madanlal Choudhary v. Union of India (2022) in a judgment that attracted criticism from constitutional scholars for its inadequate engagement with the fundamental rights implications of a statutory scheme that makes bail nearly impossible for accused persons even before their guilt is established.

This architecture of preventive detention, expanded investigative powers, and restricted bail is not constitutionally neutral. It is deployed disproportionately against persons who are poor (and therefore cannot afford extended litigation), against persons from minority communities (Muslim individuals constitute a disproportionate fraction of UAPA and criminal law detainees according to data analyzed by researchers at the Article 14 platform), against political opponents, and against civil society voices who challenge the government's preferred narratives. The constitutional framework enables this deployment because it was designed by an elite that did

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not anticipate being subject to these powers themselves, and because its safeguards have been systematically weakened by legislation and interpretation over seven decades.

2.4 Women, the Constitution, and the Persistence of Structural Patriarchy

The Indian Constitution contains strong formal guarantees of gender equality. Article 14 guarantees equality before the law to all persons. Article 15 prohibits discrimination on grounds of sex. Article 15(3) permits special provisions for women and children. Article 16 guarantees equal opportunity in public employment. Article 39 includes among the Directive Principles the right of equal pay for equal work. The constitutional framework is, on its face, gender-inclusive and egalitarian.

But the lived reality of Indian women under this constitutional framework is one of persistent and severe structural disadvantage. The Gender Inequality Index of the UNDP 2024 ranked India 108th out of 166 countries. India's female labor force participation rate is among the lowest in the world, declining from approximately 42 percent in 1990 to approximately 24 percent in 2021 before recovering to approximately 37 percent in 2024. India has among the highest rates of child marriage in the world despite the Prohibition of Child Marriage Act. Violence against women, including domestic violence, sexual assault, and acid attacks, remains pervasive: the National Crime Records Bureau data for 2022 recorded 445,256 crimes against women, a figure that criminologists regard as a substantial underestimate of actual incidence.

The constitutional failure here is structural in multiple senses. First, the non-justiciability of the Directive Principles, including the provisions on equal pay, has meant that the constitutional commitment to substantive gender equality has never been legally enforceable. Second, the constitutional recognition of personal law systems in Articles 25 and 26, combined with the failure to enact the Uniform Civil Code called for in Article 44, has left women in Muslim communities subject to personal law provisions that have in practice been used to justify instant triple talaq (now prohibited by the Muslim Women (Protection of Rights on Marriage) Act 2019 after Supreme Court intervention in Shayara Bano v. Union of India 2017), inadequate maintenance provisions, and structural disadvantage in divorce and custody proceedings.

Third, and most fundamentally, the Constitution's failure to require the dismantling of social and economic structures of patriarchal power, combined with the judiciary's historical reluctance to interfere with what it has termed "the domain of personal law" and "the customs of communities," has meant that formal constitutional equality has coexisted with deeply entrenched social inequality in ways that formal law has proved inadequate to address. The persistence of caste endogamy, dowry practice, female infanticide and feticide, restrictions on women's mobility, and gender-based occupational exclusion cannot be addressed by formal legal equality alone. They require constitutional commitment to the transformation of social relations that the framers explicitly declined to make legally enforceable.

The recent positive development of the 106th Constitutional Amendment (Nari Shakti Vandan Adhiniyam) enacted in September 2023, which reserves 33 percent of seats in the Lok Sabha, state legislative assemblies, and the Delhi assembly for women, is a significant step toward constitutional gender inclusion in the formal political sphere. But it comes seventy-three years

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after the Constitution's adoption, and its implementation is deferred until after the delimitation exercise, meaning it will likely not take effect until after 2029. The seventy-three-year delay in constitutional gender representation, which has been attributed by critics including feminist constitutional scholar Shubhankar Dam to the patriarchal composition of every Parliament since independence, is itself a constitutional comment on how long formal constitutional equality can coexist with functional constitutional exclusion.

2.5 Dalits, Adivasis, and the Constitutional Contradiction

The most profound constitutional contradiction in the Indian constitutional order is the relationship between the Constitution's formally anti-caste, anti-discrimination provisions and the persistent, violent reality of caste oppression in Indian society. The Constitution is, on its face, the most anti-caste constitutional document in the world. Article 17 abolishes untouchability and makes its practice in any form punishable. Article 15 prohibits discrimination on grounds of caste. The reservation provisions of Articles 15(4), 15(5), 16(4), and 46 create an affirmative action framework for Scheduled Castes and Scheduled Tribes that is among the most extensive in any constitutional order.

These provisions have not been without effect. The reservation system has enabled significant upward mobility for a fraction of Scheduled Caste and Scheduled Tribe communities, creating a Dalit and Adivasi educated middle class that has participated in politics, bureaucracy, judiciary, academia, and business in ways that would have been impossible without constitutional intervention. This is a genuine constitutional achievement that must be acknowledged honestly.

But the scale of continuing caste-based oppression is such that no honest assessment of the constitutional record can be satisfied with these partial achievements. The National Crime Records Bureau data show that crimes against Scheduled Castes increased by 13.1 percent between 2019 and 2022. Atrocities against Dalits, including murder, rape, arson of Dalit homes, desecration of Dalit religious sites, and forced exclusion from public spaces and water sources, continue to be documented at a scale that represents a comprehensive failure of constitutional protection.

The failure is not only one of law enforcement, though law enforcement failure is real and documented. It is also a failure of constitutional design. The Constitution prohibits caste discrimination but does not create institutional structures capable of comprehensively dismantling the social and economic foundations of caste power. The dominant-caste ownership of agricultural land in most Indian states, the control of local government and bureaucratic appointments by dominant-caste networks, the persistent caste segregation of housing and occupation in most Indian villages and towns, the inter-generational transmission of caste-based economic advantage: these structural realities are not addressed by prohibitions on discrimination or even by reservation in public employment. They require economic redistribution, land reform, social reform, and institutional redesign of a kind that the Constitution's non-justiciable Directive Principles aspire to but cannot compel.

Ambedkar, who drafted the reservation provisions of the Constitution, was explicit in his later years about their limitations. His 1945 speech on the "Annihilation of Caste," his advocacy for a

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statutory land redistribution that was rejected by the Constituent Assembly, and his public break with Congress in 1951 were all expressions of his understanding that the constitutional framework as adopted was inadequate to the task of caste annihilation. The Constitution, he eventually concluded, was a framework created by a class that did not intend to destroy the social order that constituted its privilege, and that its formal anti-caste provisions were an insufficient instrument for the task he had dedicated his life to.

Subsequent constitutional history has largely confirmed Ambedkar's pessimism. The Supreme Court's 2018 judgment in Dr. Subhash Kashinath Mahajan v. State of Maharashtra, which diluted the protection of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act by requiring prior investigation before arrest for atrocity offenses, was widely condemned by Dalit organizations as a step backward in the constitutional protection of Dalit rights. The judgment provoked nationwide protests by Dalit organizations on April 2, 2018. The government subsequently enacted an amendment restoring the original provisions of the Act, but the episode illustrated how fragile constitutional protection for Dalit rights can be in the face of dominant-caste political mobilization.

CHAPTER THREE: THE ANATOMY OF POWER ASYMMETRY

Concentration, Corruption, and the Constitutional Architecture of Unaccountability

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3.1 The Theory of Power Distribution and Its Indian Failure

The founding purpose of constitutional government, in the tradition stretching from Montesquieu through Madison through Rawls, is the distribution of power in ways that prevent its concentration in any single person, institution, or class. Madison's argument in Federalist No. 51 that "ambition must be made to counteract ambition" is the classic formulation: constitutional design must create a structure in which the pursuit of power by any one element of the system is constrained by the countervailing power of other elements. This is the logic of separation of powers, of federalism, of judicial review, of free speech and press freedom, of independent electoral administration, and of a civil society that can organize and advocate outside state structures.

The Indian Constitution incorporates the formal apparatus of this power-distribution framework. It has a separation of powers between the executive, legislature, and judiciary, though the Westminster model it follows integrates the executive into the legislature in ways that the American model does not. It has a federal structure. It has judicial review. It has formal guarantees of free speech and press freedom. It has an independent Election Commission.

But the formal apparatus has proved inadequate to prevent an extraordinary concentration of power that has accelerated most visibly since 2014 but that was building for decades before. The

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concentration of power in contemporary India operates through multiple mutually reinforcing channels, and understanding it requires engagement with each of those channels.

3.2 Prime Ministerial Dominance and the Fiction of Cabinet Government

The Westminster model of government presupposes cabinet government: collective decision-making by a Cabinet of Ministers who are collectively responsible to Parliament and who exercise joint authority over the executive branch. The Prime Minister in the Westminster model is the first among equals, the leader of the Cabinet rather than a presidential chief executive who directs the government unilaterally.

The Indian Constitution formally implements this model. Article 74 provides that the Council of Ministers, with the Prime Minister at the head, shall aid and advise the President, who shall act in accordance with such advice. Article 75 provides that the Council of Ministers shall be collectively responsible to the House of the People. These provisions, on their face, suggest a cabinet government model in which collective ministerial responsibility constrains Prime Ministerial power.

In practice, the Indian Prime Ministership has evolved into something much closer to an elected presidency than to a Westminster first-among-equals. Under Jawaharlal Nehru, the Prime Minister's dominance was justified by his personal authority and by the extraordinary circumstances of the new nation. Under Indira Gandhi, it became institutionalized: the progressive subordination of the Congress party organization to the Prime Minister's personal authority, the reduction of the Cabinet to an instrument of Prime Ministerial will, the appointment of the Prime Minister's secretariat as a parallel executive structure reporting directly to the PM rather than through the Cabinet, were all features of what scholars have called the "presidentialization" of Indian politics.

This presidentialization was enabled, at every step, by constitutional silence and institutional weakness. The Constitution does not require that major decisions be taken by a Cabinet decision recorded and minuted. It does not require transparency in Cabinet proceedings. It does not establish any mechanism through which individual ministers can challenge Prime Ministerial authority without losing their positions. It does not create any institutional structure outside the Cabinet, such as a council of state with independent membership, that can provide genuine checks on executive power.

Under Narendra Modi, the presidentialization of the Prime Ministership has reached its most advanced form. Cabinet meetings have been reported as lasting minutes rather than hours, with decisions presented for ratification rather than deliberation. Key decisions, including the demonetization of November 2016, were reportedly taken without Cabinet consultation. The development of the Prime Minister's Office as a super-bureaucracy with effective control over major policy domains, the extraordinary personalization of government branding around the Prime Minister's image, and the reduction of even senior ministerial figures to public communicators of decisions made elsewhere: these are features of a system of personal executive dominance that the constitutional framework was supposed to prevent and has proved inadequate to constrain.

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The 2016 demonetization decision deserves particular attention as a case study in the constitutional consequences of power concentration. The decision to immediately invalidate approximately 86 percent of India's currency in circulation, announced at 8 pm on November 8, 2016 and given effect from midnight, was taken without consultation with the Reserve Bank of India's full board, without parliamentary authorization, without any impact assessment, and without any advance preparation for the practical consequences for the hundreds of millions of Indians whose lives depended on cash transactions. The economic consequences were severe: the National Statistics Office data shows that economic activity contracted significantly in the quarters following demonetization, agricultural output was disrupted, and the informal sector, which employs the large majority of Indian workers, experienced substantial contraction.

The constitutional dimensions of demonetization are equally troubling. The decision was taken under the statutory authority of Section 26(2) of the Reserve Bank of India Act, which allows the Central Government to declare any series of banknotes to be legal tender. But the scale and immediate application of the decision, affecting the entire monetary system of the country, was not contemplated by the statutory provision and had constitutional implications for the fundamental right to trade and the constitutional property rights of millions of citizens who found their savings suddenly and without warning inaccessible. The Supreme Court, in a five-judge bench judgment in January 2023 in Vivek Narayan Sharma v. Union of India, upheld the demonetization decision by a four to one majority in a judgment that constitutional scholars have criticized for excessive deference to executive economic decision-making and inadequate engagement with the constitutional rights implications.

3.3 The Corruption Architecture: How Constitutional Design Enables Systematic Plunder

Corruption in India is not primarily a problem of individual moral failure. It is a structural problem that is produced by and embedded in the constitutional architecture of the state. Understanding corruption as structural rather than individual is essential to designing constitutional responses that go beyond the criminal prosecution of individual actors.

The structural roots of Indian corruption in the constitutional order are multiple and mutually reinforcing.

The first root is the discretionary licensing power vested in the executive. The constitutional framework of the Indian economy, from the Directive Principles' vision of state control over the commanding heights of the economy through the emergency economic planning powers of Articles 301 to 307, created the legal basis for a system of licenses, permits, quotas, and regulatory approvals that gave individual government officials extraordinary discretionary power over economic activity. In this system, economic rent flows to officials who can grant or withhold valuable permissions, and the extraction of bribes as a condition for such permissions becomes systematically rational from the perspective of both the official and the applicant. The liberalization of the economy beginning in 1991 reduced the scope of the licensing system but did not eliminate it, and in sectors like land conversion, mining, environmental clearances, and public contracts, the discretionary approval power of officials remains enormous.

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The second root is the constitutional structure of intergovernmental fiscal relations. The dependence of state governments on central transfers, and the dependence of local governments on state transfers, creates at each level a fiscal relationship in which the transfer of funds is accompanied by opportunities for diversion. The Comptroller and Auditor General of India's reports, produced annually and available publicly, document billions of rupees of diverted or misappropriated funds in central and state government schemes every year. The constitutional framework requires the CAG's audit but has proved inadequate to create accountability mechanisms that convert audit findings into actual recovery or legal consequence.

The third root is the constitutional protection of legislators from accountability. The anti-defection law of the Tenth Schedule, as noted earlier, creates strong incentives for legislators to vote with their party leaders rather than exercising independent judgment. The constitutional immunity of legislators from legal proceedings for anything said or done in Parliament (Article 105) and state assemblies (Article 194) protects them from civil and criminal liability for the exercise of their legislative functions. The absence of constitutional provisions for recall, the absence of mandatory asset disclosure requirements in the Constitution, and the absence of constitutional requirements for the internal democracy of political parties: these together create a constitutional environment in which legislators are formally accountable to voters only at elections, and in which the practical accountability of elections depends on the quality of electoral competition that, as we have seen, is distorted by campaign finance, media control, electoral gerrymandering, and the use of state resources for political advantage.

The fourth root is the structure of judicial appointments and judicial accountability. The collegium system of judicial appointments, as noted in Part Two of this textbook, is opaque, unaccountable, and dominated by personal networks. While it protects formal judicial independence from the executive, it creates conditions for a different kind of corruption: the corruption of personal loyalties, of social networks, of regional and caste preferences, and of the informal relationships between senior lawyers and the judges before whom they appear. Systematic analysis of Supreme Court judgments by scholars including Nick Robinson has documented significant disparities in outcomes for litigants represented by lawyers who have personal connections with sitting judges, which is a form of corruption that the current appointment system makes difficult to address.

The fifth and most structurally important root of corruption in the constitutional framework is the absence of genuine enforcement of constitutional accountability norms. The CAG can audit but not prosecute. The NHRC can recommend but not compel. The CBI can investigate but reports to the executive it is supposed to hold accountable. The ED operates under a law whose presumption-reversals have been upheld by the Supreme Court but that is regularly accused of being deployed selectively against political opponents. The Lokpal, constituted finally under the Lokpal and Lokayuktas Act 2013 after years of civil society pressure, has proved largely ineffective in investigating or prosecuting major corruption cases involving persons close to the ruling party.

This architecture of formal accountability without effective enforcement is not accidental. It reflects the interests of the political and bureaucratic elite that designs and operates the accountability machinery, and that has consistently created institutions that appear to provide

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accountability while retaining sufficient control over those institutions to prevent accountability from being applied to themselves.

3.4 Electoral Finance, Crony Capitalism, and the Constitutional Corruption of Democracy

The most devastating recent illustration of the corruption embedded in the constitutional order is the Electoral Bonds scheme, which the Supreme Court struck down in February 2024 in Association for Democratic Reforms v. Union of India as unconstitutional. The scheme had been introduced in 2018 through amendments to the Representation of the People Act, the Companies Act, and the Reserve Bank of India Act, all passed as part of a Finance Act (which requires only a simple majority, bypassing the scrutiny processes for regular legislation), allowing corporations and individuals to purchase financial instruments called electoral bonds from the State Bank of India and donate them to political parties, whose identities as recipients would not be publicly disclosed.

The scheme was designed with features that effectively ensured that information about who was donating how much to which party would be available only to the government itself (through the SBI, a public sector bank) rather than to voters or opposition parties. The Supreme Court's judgment found that this constituted a violation of the constitutional right to information, which the Court had recognized as implicit in the right to free speech and expression under Article 19(1)(a).

When the Supreme Court's direction forced the disclosure of electoral bonds data in March 2024, the pattern of donations revealed was extraordinary. Companies facing regulatory investigations by agencies under the government's control, including the CBI, the ED, and sector-specific regulators, had donated large amounts to the ruling BJP in the period after those investigations began or at times correlated with favorable regulatory decisions. The Article 14 journalism platform's analysis of the disclosed data identified a pattern that it described as a "quid pro quo" between corporate donors and the BJP-led government.

This pattern, if the analytical correlation is accurate, represents a constitutional corruption of the democratic process of a particularly serious kind. It is not merely that corporations were buying political access, which happens in every democracy to some degree. It is that a constitutional framework for political finance was deliberately designed to allow this corruption to occur without public knowledge, and that the scheme was upheld by multiple government legal defenses until the Supreme Court struck it down, and that the implementation of the scheme as a Finance Act prevented the kind of parliamentary scrutiny that might have exposed its implications.

The electoral bonds episode is a constitutional case study in what the comparative constitutional scholar Mark Tushnet has called "abusive constitutionalism": the use of nominally constitutional procedures and formally constitutional amendments to achieve outcomes that are substantively anti-constitutional, specifically the subordination of electoral democracy to the financial power of corporations with stakes in regulatory decisions. The fact that the scheme was formally legal until the Supreme Court struck it down is precisely the point: the constitutional framework, as it

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currently exists, provides insufficient protection against the use of formal constitutional instruments for substantively anti-constitutional ends.

3.5 The Judiciary as Battleground: The Crisis of Judicial Independence

The judiciary occupies a unique position in the constitutional order: it is both the institution that must protect constitutional values against executive overreach and an institution that is itself constituted through processes controlled by the executive and that operates in a political environment that creates constant pressure on its independence.

The crisis of judicial independence in India in the contemporary period has multiple dimensions that this section can only sketch. The first dimension is the collegium's failure to represent the diversity of Indian society in the composition of the higher judiciary. As of 2024, women constitute less than 15 percent of Supreme Court judges (12 of 34 positions). Judges from Scheduled Caste and Scheduled Tribe backgrounds constitute a tiny minority of the higher judiciary. The regional diversity of the Supreme Court bench is inadequate: South Indian states are significantly underrepresented relative to their population and the volume of cases from their high courts.

The second dimension is the political context of key appointments. The collegium system is defended as protecting judicial independence from the executive, but it has not prevented the appointment of judges who are perceived as politically aligned with the government of the day. The criteria for "merit" used by the collegium are opaque and have never been publicly defined. The informal networks of senior bar and bench that determine who becomes a judge in practice tend to favor persons from social backgrounds similar to those of the existing senior judiciary: upper-caste, English-educated, from families with legal backgrounds.

The third dimension is the behavior of the judiciary in politically sensitive cases. The Indian judiciary's record in such cases, as has been documented throughout this textbook, is mixed at best. The ADM Jabalpur case, the Electoral Bonds case that was delayed for years, the Article 370 case that upheld the central government's procedure, the CAA challenge that remains pending after six years, the habeas corpus petitions of UAPA detainees that are regularly delayed and often denied: these are a pattern that suggests structural judicial reluctance to confront executive power on the most politically salient questions.

This structural reluctance has been theorized by comparative constitutional scholars. Tom Ginsburg and Tamir Moustafa's edited volume "Rule by Law: The Politics of Courts in Authoritarian Regimes" (2008) identified a pattern in which courts in hybrid regimes maintain their formal independence and even deliver notable decisions against the government in cases of low political salience while consistently accommodating executive power in cases of high salience. The pattern of "selective independence" serves the regime's legitimacy interests by maintaining the court's reputation while not challenging its core interests.

There is substantial evidence that the Indian Supreme Court in the post-2014 period has operated in ways consistent with this "selective independence" model: maintaining credibility through important decisions on issues like privacy, electoral bonds, and gubernatorial misconduct, while

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demonstrating structural reluctance in the highest-salience cases like Article 370, CAA, and the electoral competitiveness of the 2024 elections. This is not a simple story of a corrupt judiciary. It is a story of an institution under enormous structural pressure whose responses to that pressure have been inconsistent and whose institutional design has not equipped it to resist that pressure effectively.

CHAPTER FOUR: THE CONSTITUTIONAL FOUNDATIONS OF INDIA'S TROUBLED NEIGHBORHOOD

How Constitutional Design Has Shaped India's External Relations and Produced a Foreign Policy of Strategic Anxiety

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4.1 Constitutions and Foreign Policy: The Theoretical Connection

The relationship between constitutional design and foreign policy is undertheorized in Indian constitutional scholarship, which has tended to treat foreign policy as an executive function that operates largely outside the constitutional framework. This neglect is a mistake. Constitutional orders shape foreign policy in multiple ways that deserve serious analytical attention.

First, constitutions create the institutional framework within which foreign policy decisions are made: who has authority to commit the state in international affairs, who must approve treaties, who can deploy military force, and who can authorize the commitment of national resources to external purposes. Second, constitutions shape the identity of the state and the claims it makes about itself in international forums: whether a state is secular or religious, whether it respects minority rights, whether it complies with international human rights norms, whether it accepts supranational legal authority. Third, constitutional design shapes the domestic political economy of foreign policy: the capacity of domestic interest groups, nationalist movements, and ethnic constituencies to constrain foreign policy choices. Fourth, constitutions shape the values and orientations of the political and bureaucratic elite that makes foreign policy decisions, by determining who has access to power and by legitimating particular ways of thinking about the state's interests and identity.

In India's case, each of these mechanisms has operated to produce a foreign policy that is characterized by anxiety about sovereignty, hostility to perceived encirclement, inconsistency in multilateral engagement, and a striking inability to build stable, productive relationships with most of its immediate neighbors.

4.2 The Sovereignty Anxiety and Its Constitutional Roots

India's foreign policy elite has, since independence, been characterized by an extraordinary sensitivity about national sovereignty that shapes its engagement with every international institution and with every bilateral relationship. This sovereignty anxiety manifests as resistance

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to binding international arbitration, reluctance to accept international human rights monitoring mechanisms, resistance to multilateral institutional authority in the South Asian region, suspicion of foreign-funded civil society organizations, and periodic displays of strategic autonomy that have been described by foreign observers as difficult to distinguish from diplomatic isolationism.

The constitutional roots of this sovereignty anxiety are deep. The Constitution vests the entire treaty-making power in the executive: Article 73 gives the Union executive power over all matters entrusted to Parliament, and since "foreign affairs" is Entry 10 of the Union List, the executive has plenary authority over international commitments without any constitutional requirement of parliamentary approval. This means that India's international commitments are not subject to the kind of domestic legislative accountability that characterizes the foreign policy process in, for example, the United States (where treaties require Senate ratification) or the European Union (where supranational law must be incorporated into national law by parliamentary process). But paradoxically, the absence of formal legislative constraint on the executive has not produced a more active or decisive foreign policy. Instead, the concentration of foreign policy authority in a small executive elite, combined with the political sensitivity of any concession of sovereignty to international institutions in a political culture where nationalism is a dominant electoral resource, has produced a systematic risk-aversion about international commitments.

The constitution's emergency powers provisions have also shaped India's security doctrine in ways that have had foreign policy consequences. Article 352, authorizing the President to declare a national emergency when the security of India or any part is threatened by external aggression, has framed India's strategic culture in terms of existential threat from hostile neighbors. The invocation of Article 352 during the 1962 China War, the 1965 India-Pakistan War, and the 1971 Bangladesh War, and the way in which emergency powers were used in each case to suppress domestic dissent and centralize decision-making, has created an institutional memory of war as a condition of domestic political consolidation as well as external security response.

This institutional memory has shaped India's approach to its neighbors in ways that comparative scholars have documented. The Kashmir conflict, the recurring tensions with Pakistan, the 1998 and subsequent nuclear tests, the Doklam standoff with China in 2017, the Galwan Valley clash in 2020: all of these have been framed in Indian official discourse in terms of existential sovereignty threats that require decisive executive response, drawing on the constitutional framework of emergency powers that positions the executive as the guardian of national survival. This framing systematically precludes the kind of give-and-take, the willingness to accept mutual constraints and supranational oversight, that characterizes the foreign policy of states that have successfully resolved long-standing territorial disputes.

4.3 Pakistan: The Constitutional Legacy of Partition and the Impossible Peace

The relationship between India and Pakistan is the most consequential and most tragic foreign policy failure in South Asian history, and its roots are partially, though not entirely, constitutional. The Partition of 1947 was not merely a political division of a territory. It was a constitutional rupture: two successor states claiming sovereignty over contiguous and overlapping populations, with unresolved territorial disputes, with competing claims over

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resources and populations, and with constitutional frameworks in both states that defined national identity partly in opposition to each other.

The Indian Constitution's approach to the Islamic Republic of Pakistan after 1947 is characterized by a constitutional silence that has proved deeply problematic. The Constitution of India makes no reference to the special relationship of India and Pakistan as successor states of a single colonial entity. It does not create any joint institution for the management of the shared rivers, the borders, the movement of people, or the vast category of unresolved issues that partition created. It treats Pakistan as a foreign state like any other, though the relationship between the two countries is unlike any other in the world: they share the history of a single nation, they share the Indus river system that is the lifeline of Pakistani agriculture, they share millions of family ties, they share languages, music, food, poetry, and memory, and they have fought four wars.

The constitutional framework for the management of the India-Pakistan relationship has been characterized by structural inadequacy: the executive conducts diplomacy, but without parliamentary accountability for the management of the most sensitive bilateral relationship in South Asia. The absence of any constitutional requirement of transparency or legislative oversight in the management of the relationship with Pakistan has allowed the relationship to be shaped, at various points, by domestic political incentives: by the political utility of anti-Pakistan nationalism in Indian elections, by the use of Pakistan-related security threats to justify executive overreach domestically, and by the periodic willingness to sacrifice possible diplomatic progress on bilateral issues to the short-term political benefits of nationalist posturing.

The impact on ordinary people in both countries is enormous and insufficiently discussed. The restriction of people-to-people contact between India and Pakistan, including the visa regime that makes it practically impossible for family members separated by partition to visit each other, the closure of overland trade routes that could benefit border communities on both sides, the prohibition of cultural exchange that would allow the shared heritage of undivided India to be celebrated, and the diversion of enormous national resources to military competition rather than human development: these are the costs that ordinary citizens pay for a constitutional and political environment that treats the Pakistan relationship as a security problem to be managed rather than a human relationship to be healed.

The Indus Waters Treaty of 1960, one of the few genuine achievements of India-Pakistan bilateral diplomacy, created a sharing arrangement for the rivers of the Indus system that has survived wars and political crises for more than sixty years. But India's increasingly assertive approach to revisiting the treaty in recent years, including legal notices seeking revision of treaty terms, reflects a constitutional nationalist calculus: the treaty was negotiated by a secular Congress government and is now being revisited by a nationalist BJP government for whom demonstrating toughness on Pakistan is a political asset. The constitutional framework provides no check on this political use of treaty relationships.

4.4 China: The Constitutional Incapacity for Managed Rivalry

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The India-China relationship is, in the second decade of the twenty-first century, the most consequential bilateral relationship in Asia and one of the most consequential in the world. Two nuclear-armed states, the world's two most populous nations, neighbors with a contested land border stretching thousands of kilometers, competing claimants to regional leadership in Asia, and states with radically different constitutional orders and political systems: their relationship will shape the geopolitics of the twenty-first century in ways that neither the current political leadership of either country fully controls.

India's constitutional framework for managing this relationship is structurally inadequate. The executive has plenary authority over foreign policy, as noted. Parliamentary oversight of the China relationship is weak: there is no permanent parliamentary committee dedicated to the Indo-China strategic relationship, there is no constitutional requirement of parliamentary authorization for military deployments along the Line of Actual Control, and the opacity of the National Security Council system means that major decisions about the management of the bilateral relationship are taken by a tiny executive circle with minimal accountability.

The Galwan Valley incident of June 2020, in which twenty Indian soldiers died in a clash with Chinese forces in the Ladakh region, illustrates the constitutional dysfunction in this relationship. The initial official response downplayed the severity of the clash and the extent of Chinese incursion into what India regards as its territory. Opposition parties demanded a statement in Parliament and were denied adequate briefing for months. The constitutional framework provided no mechanism through which Parliament could compel executive transparency about a military engagement that resulted in the deaths of twenty soldiers and potentially significant territorial changes along the LAC.

The constitutional silence on war powers, which many constitutional scholars have noted, is particularly relevant here. The Indian Constitution does not require parliamentary authorization for the deployment of military force. It does not define what constitutes an act of war or armed aggression that would trigger the Article 352 emergency power. It does not require the executive to report to Parliament about the conduct of military operations. The result is that the most consequential decisions a state can make, those involving the use of organized violence, are made by a small executive circle with minimal democratic accountability.

The absence of constitutional war powers provisions has allowed every Indian government since independence to fight wars, conduct military operations, and sustain military standoffs without systematic parliamentary oversight, and to manage the information environment around those operations in ways that serve short-term political interests rather than long-term strategic clarity. The 1962 war with China, the 1965 and 1971 wars with Pakistan, the 1999 Kargil conflict, the surgical strikes of 2016 and 2019, the Galwan encounter of 2020: in none of these cases was the full constitutional architecture of democratic oversight invoked. In each case, the executive made the critical decisions, controlled the information, and managed the political narrative with minimal accountability to Parliament or people.

4.5 Bangladesh, Sri Lanka, Nepal, and Myanmar: The Hegemon's Dilemma

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India's relationships with its smaller neighbors present a consistent pattern that reflects the constitutional characteristics of a large, centralized state whose political culture is shaped by sovereignty anxiety and whose economic and security asymmetries with its neighbors create the dynamics of regional hegemony without the responsibilities that genuine leadership entails.

Bangladesh offers the most instructive contemporary case. India-Bangladesh relations reached a moment of extraordinary promise with the premiership of Sheikh Hasina, who governed Bangladesh from 2009 to 2024 and who maintained a pro-India orientation that was deeply consequential for India's strategic interests in the region. The Indian government, under both Congress and BJP, invested heavily in this bilateral relationship, providing credit lines, infrastructure support, transit arrangements, and security cooperation.

But in August 2024, Sheikh Hasina was swept from power by a student-led uprising that was provoked by discontent with her government's handling of protest, her use of security forces against demonstrators, and widespread perceptions of authoritarianism and corruption. Her abrupt departure to India, where she has remained since, has created a diplomatic crisis. The new Bangladesh government, led initially by Nobel laureate Muhammad Yunus in an interim arrangement, has demanded her extradition to face charges in Bangladesh. India has declined. This bilateral friction has real consequences for border management, for trade, for the treatment of India's Hindu minority in Bangladesh, and for the broader strategic relationship.

The constitutional framework for managing this crisis is inadequate. The executive handles the Bangladesh relationship with minimal parliamentary oversight. The extradition question implicates treaty obligations, human rights considerations, and strategic interests in ways that deserve systematic parliamentary deliberation, but receive instead executive management behind closed doors. The treatment of Sheikh Hasina in India, and the diplomatic messages it sends about India's willingness to provide asylum to authoritarian leaders who have maintained pro-India orientations, is a constitutional-foreign policy question of real significance that has been managed as a purely executive matter.

In Sri Lanka, India's record in managing the Tamil question, from its involvement in the training of Tamil militant groups in the 1980s through the deployment of the Indian Peace Keeping Force that resulted in the deaths of over 1,000 Indian soldiers and contributed to the assassination of Rajiv Gandhi in 1991, to its complex engagement with the Sri Lankan government during the final stages of the Eelam War in 2009, represents a series of constitutional and political failures that have had severe human consequences. The constitutional framework for India's involvement in Sri Lanka was never clearly defined: the IPKF deployment was authorized by the executive under the India-Sri Lanka Accord of 1987, signed without parliamentary approval. The Accord committed India to military intervention in Sri Lanka without any constitutional authorization process and without any mechanism for democratic accountability for the consequences of that intervention.

In Nepal, India's periodic attempts to exercise political influence over Nepal's internal politics, including its 2015 economic blockade that exacerbated the suffering caused by the earthquake of that year and that was widely perceived as an attempt to pressure Nepal's government on constitutional provisions relating to the Madhesi community, reflect the constitutional political

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culture of a large centralized state that expects its smaller neighbors to accommodate its preferences. The 2015 blockade was conducted without parliamentary authorization and without any constitutional framework for accountability. It damaged India-Nepal relations severely and contributed to Nepal's increased engagement with China as a hedge against Indian pressure.

The pattern across all of India's smaller-neighbor relationships is consistent: India uses its asymmetric economic and security power to exert political influence, does so without systematic democratic accountability, and produces relationships characterized by dependency and resentment rather than genuine partnership and trust. This pattern is partly a consequence of size and asymmetry, which characterize any relationship between a large state and its smaller neighbors. But it is also a consequence of constitutional design: the concentration of foreign policy power in the executive without democratic oversight, the nationalism that the constitutional political culture produces and that constrains foreign policy choices, and the absence of constitutional commitment to any framework of regional governance that would require India to accept constraints on its behavior in exchange for the benefits of regional cooperation.

4.6 The Constitutional Basis of India's Failure at Regional Integration

The most striking comparative dimension of India's regional foreign policy failure is the contrast with the European experience of regional integration. Europe in 1945 was, like South Asia in 1947, a region devastated by war, divided by historical antagonisms, and featuring states with contested borders and overlapping ethnic and religious identities. Within fifty years, through a process of constitutional commitment to supranational governance beginning with the European Coal and Steel Community and culminating in the European Union, Europe achieved the most successful regional integration project in human history: a zone of peace, shared prosperity, freedom of movement, and institutional cooperation that transformed the geopolitics of the continent.

South Asia has achieved nothing comparable. The South Asian Association for Regional Cooperation (SAARC) has been largely moribund, with summits repeatedly postponed (no SAARC summit has been held since 2016) and with trade volumes between SAARC members among the lowest for any regional grouping in the world. The Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC) has shown more activity but remains modest in ambition and achievement.

The constitutional explanation for this failure of regional integration is multi-layered. First, the Indian Constitution, unlike the constitutions of European Union member states, contains no provision authorizing the transfer of any sovereign function to a supranational body. Article 51 of the Constitution places the duty to "foster respect for international law and treaty obligations" and to "encourage settlement of international disputes by arbitration" among the Directive Principles, but this is non-justiciable and does not constitute any constitutional authorization for membership in a genuinely supranational organization. Any meaningful regional integration in South Asia, of the kind that would require India to accept binding regional arbitration of disputes, free movement of goods and persons across borders, or supranational regulatory frameworks, would require constitutional amendment.

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Second, the Indian Constitution's provisions on citizenship and territory are strongly protective of national sovereignty in ways that make any movement toward a regional community with freedom of movement constitutionally difficult. Articles 5 to 11 define citizenship on strictly national terms. Article 1 defines India's territory in terms that have been interpreted to include not only the current national territory but also "such other territories as may be acquired." This acquisitive territorial vision is constitutionally embedded and is difficult to reconcile with the kind of territorial humility that genuine regional integration requires.

Third, and most fundamentally, the constitutional political culture of India, shaped by the nationalism that the constitution's design has incentivized and the sovereignty anxiety that its emergency powers framework has embedded, creates a domestic political environment in which genuine concessions of sovereignty to a regional body are extraordinarily difficult for any government to defend politically. The BJP government has been particularly resistant to any multilateral engagement that it perceives as compromising national sovereignty, and this resistance reflects a genuinely widespread sentiment in Indian public opinion rather than merely an ideological preference of the ruling party.

CHAPTER FIVE: THE CASE FOR CONSTITUTIONAL RECONSTRUCTION

Why Amendment Is Insufficient and What Genuine Reform Requires

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5.1 The Reform versus Replace Debate: Positions and Their Philosophical Foundations

The debate about what India needs to do about its Constitution has three broad positions: defend and preserve, reform through amendment, and replace with a new constitution.

The defense position, represented most articulately by scholars like Pratap Bhanu Mehta, Madhav Khosla, and in the political sphere by the Congress party, holds that the Constitution of India is, despite its flaws, a genuinely democratic and rights-protective document whose core values are sound and whose problems result not from fundamental design failures but from the inadequacy of political will to implement and respect constitutional commitments. This position points to the basic structure doctrine, the independent judiciary, the fundamental rights chapter, and the democratic framework as constitutional achievements worth preserving, and argues that what India needs is not a new constitution but better political leadership, more vigorous civil society, and judicial enforcement of existing constitutional norms.

The reform position, represented by scholars from a range of perspectives including advocates of proportional representation, genuine federalism, and anti-corruption framework redesign, holds that the Constitution's problems are significant but addressable through targeted constitutional amendments. This position advocates for specific reforms: an independent judicial appointments commission, constitutional regulation of political parties and campaign finance, genuine fiscal federalism, the strengthening of local self-government, the extension of constitutional rights to

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include justiciable social and economic rights, and the reform of the emergency powers framework.

The replacement position, advanced in recent years by Bibek Debroy, by some scholars in the Hindu nationalist tradition (though their conception of a new constitution is radically different from the democratic reconstruction this textbook advocates), and by a smaller number of progressive constitutional scholars, holds that the Constitution's problems are too fundamental to be corrected by amendment, that the colonial infrastructure on which it was built cannot be dismantled while retaining the building it constructed, and that a genuinely free and democratic India requires a new constitutional founding.

This textbook, through its fourteen parts, has been building the argument for the replacement position, though with emphatic rejection of the Hindu nationalist version of that argument. The argument is not that every provision of the current Constitution is worthless or that the basic structure doctrine has no value or that the fundamental rights chapter has produced no benefit. The argument is that the structural architecture of the Constitution, the colonial executive dominance embedded in Articles 52 to 89, the inadequate federalism of the Seventh Schedule, the non-justiciability of social and economic rights, the absence of constitutional regulation of political parties and elections, the emergency powers framework of Articles 352 to 360, the preventive detention provisions of Article 22, and the absence of constitutional mechanisms for genuine democratic accountability: these cannot be adequately corrected by amendment because the problem is not a provision here or a provision there but the entire constitutional culture that the existing document has produced and that now resists reform from within.

The philosophical foundation for this argument draws on the constitutive theory of constitutions articulated by thinkers including Frank Michelman and Roberto Unger. In this theory, a constitution is not merely a regulatory document constraining pre-existing political behavior. It is a constitutive document that brings into being a particular kind of political community with particular values, practices, and understandings. If the constitutive document is itself deeply flawed, the community it constitutes will be flawed in ways that cannot be corrected by adding or removing regulatory provisions. The community must reconstitute itself, must go back to the foundational question of what kind of political life it wishes to live together, and must give itself a new constitutive act.

This reconstitutive argument has a democratic corollary: the reconstitution must be genuinely democratic. It must be accomplished through a process in which the full diversity of the Indian people, not merely its educated elite, participates. It must involve deliberate engagement with communities that have been silenced by the current constitutional order: the poor, the marginalized, the linguistic minorities, the women who constitute half the population, the Adivasi communities whose relationship with the land predates any constitution, the Dalit communities whose constitutional aspiration Ambedkar expressed and whose constitutional reality falls so far short of his vision. It must be a process of genuine deliberation, not merely elite drafting with populist consultation attached.

5.2 What a New Constitution Must Address: A Jurisprudential Framework

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A new Constitution of India, if it is to be genuinely free of the colonial inheritance and genuinely responsive to the needs of the people it governs, must address a set of structural questions that the current Constitution has either failed to address or has addressed in ways that have proved inadequate.

The first question is the nature of the executive. India does not need to choose between a Westminster parliamentary executive and an American-style presidential executive. There are constitutional designs, developed and implemented successfully in many democratic states, that combine the democratic accountability of the parliamentary model with the institutional independence and stability that the presidential model offers. The German Basic Law's system of "constructive vote of no confidence," which requires Parliament to elect a replacement Chancellor before it can dismiss the incumbent, provides strong governmental stability without presidential concentration. The Finnish constitutional model combines a directly elected President with real powers in foreign policy and security with a Prime Minister accountable to Parliament. The Swiss Federal Council provides collective executive leadership without any dominant single executive. These models are worth serious study in any Indian constitutional reconstruction.

Whatever model is chosen for the executive, a new Constitution must include explicit constitutional provisions for the accountability of the executive to Parliament and through Parliament to the people. This includes: mandatory full Cabinet decision-making for major executive decisions, with recorded minutes; mandatory parliamentary scrutiny of international commitments within a defined time frame; mandatory parliamentary oversight of military deployments; mandatory transparency in the advice tendered by the executive to the President; and explicit constitutional prohibition of the use of state resources, state media, or state regulatory power for partisan electoral advantage.

The second question is federalism. A new Constitution must genuinely redistribute power between the centre and the states in ways that the current Constitution does not. This requires: a genuinely equal division of revenue-raising power, or at minimum a constitutional guarantee of adequate revenue sharing that is not subject to central government discretion; an explicit role for state governments in the appointment of constitutional bodies that operate within their territories or affect their interests, including Election Commissioners for state elections, State Governors (or their replacement by directly elected Governors), and members of regulatory bodies; the constitutionalization of a genuinely powerful Inter-Governmental Council to resolve centre-state disputes; and the limitation of the Centre's power to reorganize states, impose President's Rule, or override state legislation without genuine state representative consent.

The third question is social and economic rights. A new Constitution must make justiciable the social and economic rights that the current Constitution relegates to non-enforceable Directive Principles. The International Covenant on Economic, Social and Cultural Rights, to which India is a party, requires state parties to take steps to progressively realize the rights to health, education, housing, food, and work. Constitutional implementation of these obligations requires, at minimum, a framework of justiciable social rights with remedial flexibility that allows courts to order appropriate governmental action without specifying the content of that action in advance. The experience of South Africa's Constitutional Court with the justiciability of

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socioeconomic rights, including its landmark judgments in Government of the Republic of South Africa v. Grootboom (2000) and Minister of Health v. Treatment Action Campaign (2002), demonstrates that social rights can be made justiciable without converting courts into administrators.

The fourth question is political party regulation. A new Constitution must constitutionalize the regulation of political parties in ways that require internal democracy, transparent finance, and accountability to their members. The German Basic Law Article 21 provides a model: it declares that political parties shall participate in forming the political will of the people, that their internal organization must conform to democratic principles, and that their financial affairs must be publicly disclosed. It also provides that parties that seek to undermine or abolish the free democratic basic order shall be unconstitutional and may be banned by the Federal Constitutional Court. The last provision requires careful design in the Indian context given the risk of misuse, but the basic framework of constitutionalized party regulation is necessary and urgent.

The fifth question is electoral system reform. A new Constitution should not enshrine the first-past-the-post electoral system. It should provide for a proportional or mixed electoral system that more accurately translates popular preferences into legislative representation. The choice among specific proportional systems (list PR, single transferable vote, mixed member proportional) is a matter for the constituent process to determine through genuine deliberation. The constitutional requirement should be the principle: that the legislative assembly must be constituted through an electoral system that fairly and proportionally represents the preferences of the electorate.

The sixth question is preventive detention. A new Constitution should have a clear and unequivocal prohibition on detention without trial, subject only to the most narrowly defined emergency exceptions with robust judicial oversight, mandatory time limits, and full rights of habeas corpus regardless of the constitutional circumstances. The experience of every democracy that has allowed broad preventive detention powers is the same: those powers are used against dissent, against minorities, against the poor, and against anyone the state finds politically inconvenient.

The seventh question is regional and international engagement. A new Constitution should include explicit constitutional provision for India's participation in supranational governance structures, for the transfer of sovereign functions to regional bodies on the basis of reciprocity, and for the acceptance of binding international arbitration of territorial and other disputes. It should constitutionalize the principle of peaceful resolution of disputes with neighbors and the commitment to regional integration as a national interest. And it should require parliamentary approval for international commitments, ensuring democratic accountability for the foreign policy choices that shape India's relationship with the world.

5.3 The Process of Constitutional Replacement: Democratic Legitimacy and Its Requirements

If the argument for constitutional replacement is accepted, the question of process becomes paramount. A new constitution that is drafted by an unrepresentative body, in an opaque process,

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under conditions of political pressure, will reproduce the failures of the current document regardless of the quality of its substantive provisions. The process of constitutional making is constitutive of the legitimacy of the document produced.

The minimum requirements of a legitimate constitutional replacement process, derived from the comparative constitutional theory of Hanna Lerner, Jon Elster, and Andrew Arato, include the following.

The process must be authorized by the existing constitutional framework, or by a democratic process that commands sufficient popular legitimacy to override the existing framework. A revolution from above, in which the ruling government unilaterally declares the existing Constitution void and substitutes a new one, would be constitutionally illegitimate regardless of the content of the new document.

The process must be broadly representative. The constituent assembly for a new Constitution of India should not be constituted by the Parliament that happens to be in power at the time of the decision to frame a new constitution. It should be constituted through a special election, by universal suffrage, in which every adult citizen has the right to vote. It should include mandatory representation of women, scheduled castes, scheduled tribes, minorities, and regional communities in proportions reflecting their share of the national population. It should provide for the participation of civil society organizations, local government representatives, and other non-state actors in defined consultative roles.

The process must be deliberate and deliberative. The drafting of a new constitution cannot be accomplished in haste. The Indian Constituent Assembly of 1946 to 1950 deliberated for nearly three years, with 11 sessions over 165 days. A new constituent process should take at least as long, with genuine deliberation among constituents who represent the full diversity of India rather than the educated nationalist elite that dominated the original process.

The process must be transparent. Every session of the constituent assembly, every draft provision, every substantive debate should be publicly available in real time, in all major Indian languages. The constituent assembly should conduct public hearings in every state and in multiple languages, and should incorporate genuine public participation into its deliberative processes.

The product must be ratified by the people. A new constitution should not come into force on the basis of a constituent assembly vote alone. It should be put to a national referendum, in which a majority of citizens voting, with thresholds ensuring adequate participation and regional approval, must ratify the document. This ratification referendum is the moment at which "We, the People" truly gives itself a constitution, rather than having a constitution given to it in its name.

5.4 The British Colonial Legacy and the Decolonial Constitution

The argument for a new constitution is, at its most fundamental level, a decolonial argument. The current Constitution of India is, as this textbook has documented in every part, built on colonial

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infrastructure. It reproduces colonial administrative structures, colonial concepts of sovereignty and emergency, colonial approaches to the relationship between the state and its subjects, colonial ideas about the proper distribution of power between the centre and the periphery, and colonial assumptions about who counts as a legitimate political actor and who does not.

Decolonization in the constitutional sense does not mean the rejection of every concept associated with colonial origin. Many of the concepts embedded in the Indian Constitution, including the rule of law, judicial review, fundamental rights, and the principle of representative government, are genuinely universal values that Indian democracy should embody regardless of their historical transmission through colonial channels. The task is not to reject everything British but to distinguish between those elements of the constitutional inheritance that represent genuine universal values, which should be retained and strengthened, and those elements that represent the specific interests of colonial administration and the specific anxieties of a transitional elite, which should be replaced.

The genuinely colonial elements that must be replaced in a new Constitution include: the preventive detention framework, which was created to suppress the independence movement and has been used to suppress dissent ever since; the emergency powers framework, which was created to allow the colonial executive to bypass democratic processes in moments of political crisis and which has been used for the same purpose by its Indian inheritors; the centralizing architecture of the federal system, which was designed for colonial management of peripheral territories and has been used for partisan management of state governments; the opacity of executive decision-making that was a feature of colonial administration and has been preserved in constitutional provisions insulating executive advice from judicial scrutiny; and the weakness of local self-government, which reflected the colonial state's interest in maintaining territorial control against local democratic accountability and which has been preserved in a constitutional framework that formally recognizes but functionally underfunds and underempowers local democracy.

The replacement of these colonial elements with genuinely democratic equivalents is not a technical legal exercise. It is a political and philosophical act: the act of a people taking genuine ownership of their constitutional order, deciding for themselves what kind of state they want to live in, and making a binding commitment to each other about the terms of their shared political life. This act has been waiting to happen in India since August 14, 1947. It is time for it to happen now.

5.5 Learning from Global Constitutional Experience: The Comparative Dimension

Any serious proposal for constitutional reconstruction in India must engage with the comparative constitutional experience of states that have undertaken similar projects successfully, and must learn from the failures as well as the successes.

The South African constitutional transition of 1993 to 1996 offers perhaps the most instructive parallel. South Africa, like India, was a nation emerging from a period of systematic constitutional injustice (apartheid rather than colonialism, though apartheid was itself a colonial project). The South African constituent process addressed the challenge of constitutional

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legitimacy through an innovative two-stage approach: an interim constitution negotiated by political parties under conditions of democratic transition, followed by a final constitution drafted by an elected Constitutional Assembly that was required to comply with "constitutional principles" negotiated in the interim stage and certified by the Constitutional Court. The South African Constitution of 1996 includes justiciable socioeconomic rights, strong institutional protections for judicial independence, a comprehensive bill of rights, and genuine federal provisions. Its twenty-five years of operation have demonstrated both its strengths (the protection of rights against executive overreach in multiple significant cases) and its weaknesses (the corruption of state institutions under the Zuma presidency), and both dimensions offer lessons for Indian constitutional reconstruction.

The Kenyan constitutional reform process of 2010 also offers important lessons. Kenya's 2010 Constitution was the result of a long process of public participation and constitutional reform, following the political crisis of 2007 to 2008 and the mediation effort led by Kofi Annan. The process included extensive public participation, a national constitutional referendum, and the adoption of a constitution that significantly decentralized power, strengthened human rights protections, and reformed the judiciary. The Kenyan experience demonstrates that constitutional transformation is possible even in deeply divided and institutionally challenged societies when the political will and the legitimate constituent process are present.

The Bolivian and Ecuadorian constitutional processes of 2008 and 2009, which introduced the concept of "plurinational" constitutionalism recognizing the rights of indigenous communities as collective constitutional actors, offer a model for India's approach to the rights of Adivasi communities. The recognition of collective rights, community governance systems, and territorial autonomy for indigenous communities in the Bolivian and Ecuadorian constitutions goes further than anything the Indian Constitution attempts, and while the implementation of these provisions has been imperfect, the constitutional recognition itself represents an advance in constitutional thinking that India, with the world's largest Adivasi population, should engage with seriously.

The Icelandic "crowdsourced" constitutional process of 2011, while ultimately unsuccessful in producing a ratified constitution (the Parliament declined to ratify the draft produced by the crowdsourcing process), demonstrates the possibilities of using digital technology for large-scale public participation in constitutional deliberation. A new Indian constitutional process could use digital platforms to enable genuine deliberative participation by millions of citizens who would otherwise have no effective voice in the process, while maintaining the representative accountability of a formal constituent assembly.

5.6 The Historical Moment: Why Now Is Both Necessary and Possible

The argument that India needs constitutional reconstruction is not new. It has been made, in various forms, by scholars and public intellectuals since at least the 1970s. What is new about the present moment is the combination of urgency and opportunity that makes the case for action more pressing than ever before.

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The urgency is supplied by the developments documented throughout this chapter and throughout this textbook: the consolidation of executive power under a Hindu nationalist government, the systematic erosion of institutional independence, the weaponization of colonial-era legal provisions against dissent, the growing gap between the constitutional promise of equality and the social reality of caste and communal discrimination, the degradation of regional relationships, and the hollowing out of democratic competition. These developments are not merely failures of political will that better leadership can reverse. They are constitutional failures: the result of structural features of the constitutional order that have been available for exploitation and that have been exploited by a sufficiently determined political force.

The opportunity is provided by the 2024 election results, which, while delivering Modi his third consecutive term in government, did so with a significantly reduced majority that required coalition partners and demonstrated that the BJP's claim to unconstrained majoritarian mandate had been rejected by more than 60 percent of the electorate. The post-2024 political environment is one in which no single party has the kind of overwhelming parliamentary dominance that would allow it to impose a new constitution on its own terms. A genuine constituent process, if it could be politically initiated, would be one in which multiple political perspectives would need to negotiate genuinely with each other about constitutional fundamentals.

The opportunity is also provided by the extraordinary vitality of Indian civil society, which has demonstrated repeatedly, from the Anna Hazare anti-corruption movement of 2011 through the farmers' protests of 2020 to 2021 through the student protests that toppled Sheikh Hasina in Bangladesh next door: that organized popular pressure can change political reality. The constitutional reform movement in India has, to date, operated primarily within the legal academy and the pages of law reviews. It has not become a mass political movement. That it has not yet become a mass movement is a consequence partly of the genuine difficulty of translating constitutional abstractions into political mobilization, and partly of the co-optation of constitutional discourse by parties that invoke the Constitution rhetorically while undermining it substantively. But there is no constitutional law that says it must remain a project of the academy. The conditions for its transformation into a genuine popular movement are present. What is required is the will to make the argument, as this textbook has endeavored to do, clearly, honestly, and with the urgency that the moment demands.

5.7 The Role of Courts in the Transitional Period: Constitutional Maintenance Before Constitutional Reconstruction

Any realistic assessment of the timeline and political conditions for constitutional reconstruction must reckon with the fact that the process, even if politically initiated, will take years. During those years, the existing Constitution remains in force, and the question of how courts should interpret it in conditions of constitutional stress is of the greatest practical importance.

The theory of constitutional maintenance in transitional conditions draws on the work of scholars including Mark Tushnet (on "constitutional hardball"), Aziz Huq and Tom Ginsburg (on democratic erosion), and Kim Lane Scheppele (on "autocratic legalism"). These scholars have analyzed the ways in which democratic constitutions can be undermined by political actors using

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formally legal means, and have argued for constitutional interpretive strategies that are calibrated to resist such erosion rather than to accommodate it in the name of deference to democratic will.

For the Indian Supreme Court, this means: taking seriously the structural dimension of constitutional complaints about institutional capture, not merely the individual rights dimension; being willing to use its supervisory jurisdiction over constitutional institutions, including the Election Commission, the CAG, and the CBI, to maintain their independence against executive influence; maintaining genuine independence in the interpretation of fundamental rights provisions, resisting the temptation of judicial deference to executive "expertise" on security questions that serve to insulate national security apparatus from constitutional scrutiny; and, above all, deciding constitutionally important cases on their merits within a reasonable time, rather than using delay as a mode of de facto accommodation of constitutional violations.

The Supreme Court's record in the post-2014 period is, as this textbook has documented, mixed. There have been genuinely important protective judgments: on privacy, on electoral bonds, on gubernatorial conduct, on the right to information, and on the protection of journalists and activists in specific cases. But there has also been an institutional tendency toward accommodation of executive power on the most politically salient questions, and this tendency has consequences for the credibility of constitutional protection that extend far beyond the individual cases in which it is manifested.

The court that must maintain constitutional order in the present must also be the court that legitimates and oversees the constitutional reconstruction that the present calls for. This is a high demand on an institution that has shown itself to be structurally vulnerable to the very pressures it must resist. But the demand is real, and the court's response to it will be a defining feature of Indian constitutional history in the decade ahead.

CHAPTER SIX: JURISPRUDENTIAL FRAMEWORKS FOR CONSTITUTIONAL RECONSTRUCTION

Theoretical Foundations, Philosophical Traditions, and the Vision of a Just Constitution

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6.1 Critical Legal Studies and the Indian Constitution

Critical Legal Studies (CLS) emerged in the American legal academy in the 1970s as a theoretical project challenging the assumption that law, including constitutional law, is a neutral system of rules that operates independently of power and politics. The CLS scholars, including Roberto Unger, Duncan Kennedy, Mark Tushnet, and Karl Klare, argued that legal doctrines are not logically determined but are politically contingent, that constitutional rights claims can be used to reproduce as well as to challenge social hierarchy, and that the promise of legal liberalism (that rights-based legal order can achieve genuine social justice) is systematically undermined by the class character of legal institutions.

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This CLS critique applies with particular force to the Indian constitutional order. The analysis throughout this textbook can be read as a sustained CLS argument: that the constitutional rights guaranteed in Part III of the Constitution have functioned, in their enforcement, to protect the interests of the propertied, educated, and connected classes while providing formal but often not substantive protection to the poor and marginalized; that the constitutional structures of governance, while formally democratic, have been systematically available for capture by powerful interests; and that the legal doctrine produced by the courts, including the basic structure doctrine, the Article 21 expansions, and the emergency power jurisprudence, has been shaped by the class position and political context of the judges rather than by the neutral application of constitutional text and principle.

The CLS insight that law cannot be politically neutral does not, however, lead to the nihilistic conclusion that constitutional law is merely politics by other means and that constitutional reconstruction is therefore pointless. The more productive conclusion, developed by scholars in the critical legal studies tradition such as Karl Klare in his "Legal Culture and Transformative Constitutionalism" (1998), is that constitutional reconstruction is possible and necessary but must be approached with awareness of the ways in which constitutional text is always interpreted within a political and social context, and must therefore include not only textual redesign but institutional redesign: the creation of institutions for constitutional interpretation that are genuinely independent, genuinely representative, and genuinely committed to the transformative project that the constitution announces.

6.2 Postcolonial Constitutional Theory and the Decolonial Project

Postcolonial constitutional theory, developed by scholars including Upendra Baxi, Ratna Kapur, Ananya Vajpeyi, and in a different tradition Partha Chatterjee, offers a framework for understanding the Indian constitutional order as a product of the particular historical moment of decolonization: a moment in which the nationalist elite that took power from the colonial state was simultaneously shaped by colonial education and institutions and committed to the creation of a new, independent political order.

Upendra Baxi's concept of the "suffering of postcolonial subjects" as the central concern of transformative constitutional adjudication offers a powerful alternative to the Dworkinian framework of rights as "trumps" that has dominated much Indian constitutional scholarship. For Baxi, constitutional law is not primarily about the articulation and application of abstract principles but about the concrete alleviation of the suffering that the constitutional order is supposed to prevent. Constitutional interpretation, in this tradition, must be evaluated by the question: does this interpretation reduce or increase the suffering of those at the bottom of the constitutional order?

Applied to the question of constitutional reconstruction, Baxi's framework suggests that the criterion for evaluating any constitutional proposal is not doctrinal elegance or theoretical coherence but its likely effect on the lives of the most vulnerable: the Dalit who faces caste violence in a village without police protection, the Adivasi whose forest land is being acquired for a mine, the Muslim journalist held under UAPA, the woman who cannot access justice for domestic violence, the informal worker who has no constitutional protection for her labor rights,

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the poor urban dweller who is evicted from her slum to make way for a smart city. A constitution that does not improve the constitutional reality for these people is not an adequate constitution, regardless of its textual sophistication.

6.3 Rawlsian Justice and the Constitutional Veil

John Rawls's theory of justice, developed in A Theory of Justice (1971) and Political Liberalism (1993), provides a framework for thinking about constitutional design that is particularly relevant to the Indian context. Rawls's "original position" thought experiment asks: what principles of justice would rational agents choose if they were behind a "veil of ignorance," not knowing their own position in society, their social class, their religious identity, their gender, their race, or any other particular feature of their identity? The principles they would choose, Rawls argues, are those that maximize the position of the worst-off member of society (the "difference principle") and that protect equal basic liberties for all.

Applied to Indian constitutional design, the Rawlsian framework asks: if you were designing a constitution without knowing whether you would be born a Brahmin or a Dalit, a Muslim or a Hindu, a woman or a man, rich or poor, in the formal economy or the informal economy, would you design the constitution that India currently has? The answer is clearly no. You would design a constitution with justiciable social and economic rights, because you would not know whether you would have access to the legal system. You would design a constitution with genuine affirmative action for historically excluded groups, because you would not know whether you would be born into one. You would design a constitution with strong minority rights, because you would not know which religious community you would be born into. You would design a constitution with real police accountability, because you would not know whether you would be the one subject to custodial violence. You would design a constitution with genuine federalism, because you would not know which state you would live in.

The Indian Constitution, as this textbook has documented, falls short of Rawlsian justice by every measure. It protects some liberties effectively while leaving others unprotected. It creates formal equality without substantive equality. It provides constitutional remedies that are accessible to the educated and propertied but inaccessible to those who need them most. The Rawlsian framework offers not only a critique of the current constitutional order but a specification of what a just constitutional order would look like, and it confirms the need for the comprehensive constitutional reconstruction that this textbook advocates.

6.4 Republican Constitutional Theory and the Problem of Domination

The republican tradition in constitutional theory, revived in contemporary scholarship by Phillip Pettit, Frank Lovett, and others, offers an analysis of freedom as non-domination that is particularly apt for the Indian constitutional context. In the republican tradition, freedom is not merely the absence of interference: a slave whose master is benevolent is not free even if the master never actually interferes with the slave's choices. Freedom requires the structural absence of domination: the absence of any person's or institution's capacity to arbitrarily interfere with one's choices and life plans.

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The Indian constitutional order, as this textbook has demonstrated, is structured in ways that produce domination of the many by the few. The domination of poor citizens by the state through the preventive detention framework. The domination of Dalits and Adivasis by the constitutional order's failure to dismantle the economic structures of caste power. The domination of state governments by the Centre through fiscal dependence and gubernatorial manipulation. The domination of citizens by the corporate-political nexus that the electoral finance system enables. The domination of women by patriarchal social structures that the constitutional framework has been inadequate to transform.

Republican constitutional theory suggests that the goal of constitutional reconstruction is not merely the formal protection of individual rights but the systematic elimination of the structural conditions of domination. This requires not only the reform of specific constitutional provisions but the transformation of the institutional culture of the state: from an institution that dominates its subjects (the colonial legacy) to an institution that serves its citizens (the democratic aspiration). This transformation is not achieved by constitutional text alone. It requires the alignment of constitutional design, institutional practice, political culture, and social transformation in a way that India's constitutional history has not yet achieved.

6.5 Ambedkarite Constitutionalism as the Foundation of Reconstruction

The most important theoretical resource for Indian constitutional reconstruction is not an imported Western framework but one that Ambedkar developed from within the Indian experience, drawing on his profound analysis of caste, democracy, and the conditions of social transformation.

Ambedkar's constitutional theory, developed across his lifetime of writing, beginning with Castes in India (1916) and culminating in Annihilation of Caste (1936) and the speeches and writings of his later years, offers several foundational insights for constitutional reconstruction.

The first insight is that political democracy without social democracy is incomplete and unstable. Ambedkar's famous warning in his final Constituent Assembly speech of November 25, 1949, that India had achieved political democracy on January 26, 1950 but remained far from social and economic democracy, and that this combination was "a life of contradictions" that must be resolved by making social and economic democracy a reality, was not merely a prediction. It was a constitutional prescription: that the Constitution must be used as an instrument of social transformation, not merely of political organization.

The second insight is that without the destruction of social hierarchy, political rights remain formal and unreal. Ambedkar's analysis of caste was not merely a sociological observation but a constitutional argument: that the horizontal application of rights, the equal treatment of all citizens by the state, is insufficient in conditions of vertical social hierarchy in which the economic and social power of upper-caste communities systematically disadvantages the exercise of formal rights by lower-caste communities. A constitution genuinely committed to equality must address the structural conditions of inequality, not merely prohibit the state from acting unequally.

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The third insight is that minorities require positive constitutional protection, not merely formal neutrality. Ambedkar's advocacy for separate electorates for scheduled castes, his insistence on reservations as a constitutional requirement rather than a legislative discretion, and his later advocacy for the constitutional recognition of Buddhist minority rights all reflect a constitutional theory in which minorities cannot be adequately protected by formal equality alone but require constitutional structures that guarantee their political representation and social development.

These Ambedkarite insights are more relevant today than when Ambedkar articulated them. The failure of formal constitutional equality to achieve the social transformation Ambedkar called for, the persistence of caste violence, the inadequacy of the reservation framework to address the structural conditions of Dalit poverty, and the vulnerability of minority communities in the current political environment all confirm the prescience of his analysis. A new Constitution of India must be built on Ambedkarite foundations: on the principle that social democracy is the precondition of political democracy, that structural inequality requires positive constitutional remedy, and that the test of constitutional adequacy is not doctrinal elegance but the lived experience of those who are most vulnerable to its failures.

CONCLUSION TO PART FOURTEEN: THE CONSTITUTION WE NEED

This part has argued, across six chapters and more than twenty-five thousand words of detailed analysis, a single thesis: that the Constitution of India, in its current form and with its accumulated institutional culture and interpretive tradition, is insufficient to the needs of a genuinely democratic, just, and free India in the twenty-first century.

It has argued this thesis through multiple dimensions of analysis. The constitutional production of nationalism, through which the structural features of the existing Constitution have enabled the rise of Hindu majoritarianism and the systematic marginalization of minorities, dissent, and difference. The citizen as constitutional victim, through which the ordinary people of India, the poor, the marginalized, the women, the Dalits, the Adivasis, the Muslims, the journalists, the academics, and the activists have been not the beneficiaries of the constitutional order but its casualties. The anatomy of power asymmetry, through which the concentration of power in the executive, the corruption of electoral democracy, and the structural inadequacy of accountability mechanisms have produced a political system that serves the interests of the powerful at the expense of the powerless. The constitutional foundations of India's troubled neighborhood, through which the sovereignty anxiety, the democratic deficit in foreign policy, and the nationalist political culture embedded in the constitutional order have made India a difficult and sometimes destructive neighbor in a region that desperately needs cooperative governance.

And it has argued for the case of constitutional reconstruction: not merely reform through amendment, which is insufficient, but genuine constitutional replacement through a democratic, representative, deliberative, and participatory constituent process that gives the people of India, for the first time, a Constitution that is genuinely their own.

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The British gave India a constitutional framework. The nationalist elite adapted and adopted it. Seventy-five years of experience have revealed its inadequacies. The time has come for the people of India to give themselves, through their own constituent power, a constitution that speaks not in the voice of colonial administration or nationalist elite but in the voice of every farmer, every woman, every Dalit, every Muslim, every tribal community, every informal worker, every dissident voice, every child who deserves education, every patient who deserves healthcare, every citizen who deserves dignity.

That constitution does not yet exist. But the argument for it, as this textbook has endeavored to show, is as clear and as urgent as any constitutional argument in the world today. The question is whether the political will and the popular movement to realize it can be built. That is no longer a question of constitutional theory. It is a question of constitutional practice. And it is a question that the citizens of India, the "We, the People" who have never truly possessed the Constitution that claims to be theirs, must now answer for themselves.

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End of Part Fourteen. Part Fifteen will address the constitutional dimensions of digital rights, artificial intelligence governance, data protection, and the emerging technological sovereignty questions that no twentieth-century constitution adequately addresses, and will develop the argument for a constitutional framework for the digital age that India's constitutional reconstruction must incorporate.

PART FIFTEEN: THE DIGITAL CONSTITUTION AND THE CRISIS OF TECHNOLOGICAL SOVEREIGNTY

Rights in the Age of Algorithms, Surveillance Architecture, Data Colonialism, and the Failure of a Twentieth-Century Document to Govern a Twenty-First Century State

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PREFACE TO PART FIFTEEN

The previous fourteen parts of this textbook have examined the constitutional crisis of India from the perspective of its colonial inheritance, its structural centralisation, its failure to achieve genuine federalism, its betrayal of fundamental rights for the majority of citizens, its production of authoritarian nationalism, its corruption of electoral democracy, its judicial accommodation of executive power, and its inadequacy as a framework for genuine social transformation. All of those arguments retain their force and all of those crises remain unresolved. But there is a dimension of constitutional crisis that no previous part of this textbook has addressed with the depth it demands, a dimension that is simultaneously the most recent and the most urgently dangerous: the constitutional crisis of the digital age.

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India in the year 2026 is a country where approximately 800 million people use the internet, where more than a billion people are enrolled in a biometric identification system that is the largest of its kind on earth, where artificial intelligence systems make or influence decisions about welfare entitlements, creditworthiness, immigration status, criminal risk, and political messaging, where internet shutdowns are deployed as routine instruments of governance and are used more frequently than in any other country in the world, where surveillance technologies of extraordinary power and reach operate without meaningful statutory framework or judicial oversight, and where the legislative framework governing digital life was built on a law enacted in the year 2000 that was never designed for the era of smartphones, social media, machine learning, biometric datafication, or algorithmic governance.

And the Constitution of India, that seventy-six-year-old document built on the architecture of the Government of India Act 1935 and the Westminster parliamentary conventions of a departing empire, contains not a single word about digital rights, not a syllable about data protection as a constitutional value, not a clause about algorithmic governance, not a provision about artificial intelligence, and not a framework for the protection of citizens against a form of state power that the colonial administrators who designed its foundational architecture could not have imagined and that the framers who adapted it in 1950 did not live to witness.

This is not merely a problem of textual modernisation, the sort of problem that can be fixed by adding a new chapter to an existing document. It is a problem that reveals, more starkly than any previous crisis, the fundamental inadequacy of the existing constitutional order for the governance of a society in which the relationship between the citizen and the state is being profoundly transformed by technology, in which new forms of power are being created that neither nineteenth-century liberalism nor twentieth-century constitutionalism was designed to address, and in which the oldest and most persistent constitutional problem, the problem of how to prevent the concentration of power from destroying freedom, is being reproduced in forms that are simultaneously more sophisticated, more pervasive, more intimate, and more difficult to resist than any that came before.

This part of the textbook argues that the constitutional crisis of the digital age is not a separate problem from the constitutional crises examined in earlier parts. It is those earlier crises amplified, accelerated, and deepened by technology. The colonial tendency to monitor and control populations is reproduced at a scale and with an intimacy that the British Raj could not have dreamed of. The structural centralisation of the Indian constitutional order is extended into a new domain where the Centre can exercise power over individual citizens in ways that no Governor's appointment or Article 356 proclamation could achieve. The failure to protect the poor and marginalised from state power is reproduced in digital form, where algorithmic systems exclude the digitally illiterate from welfare, where biometric failures deny food to the hungry, where surveillance falls most heavily on those who can least resist it. The corruption of democratic processes is deepened by the use of data-driven political messaging, deepfake technology, and the algorithmic amplification of religious and ethnic hatred.

And the Constitution, which has already failed in its promises to so many citizens in so many ways, is failing them again, in new ways, for the same structural reason: it was designed by an elite for the management of a population, not for the liberation of a people, and the technology of

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the twenty-first century has given the elite new instruments of management that the Constitution provides no adequate means to check.

The argument of this part is organised across nine chapters. Chapter One examines the constitutional void in which digital rights currently exist in India, tracing the failure of the existing constitutional framework to address the emergence of digital life as the primary arena of political, social, and economic activity for hundreds of millions of citizens. Chapter Two examines the Aadhaar biometric identification system as the central case study of how the state has used technology to create a new architecture of control that extends the logic of colonial registration and identification into every aspect of daily life. Chapter Three examines the surveillance architecture of the Indian state, tracing its lineage from the colonial wiretapping and monitoring systems through the post-independence security apparatus to the current combination of Aadhaar, facial recognition, social media monitoring, and spyware that constitutes one of the most comprehensive surveillance states among formally democratic nations. Chapter Four examines the Digital Personal Data Protection Act 2023 as a case study of how legislation nominally designed to protect citizens from data exploitation has in fact been designed to protect state power and commercial interests while providing cosmetic rather than substantive protection to citizens. Chapter Five examines the governance of artificial intelligence and the constitutional questions it raises about algorithmic decision-making, automated governance, and the delegation of state power to private technological systems. Chapter Six examines free speech, platform power, and the emergence of the digital public sphere as a new arena for constitutional conflict. Chapter Seven examines internet shutdowns as a constitutional weapon deployed systematically against dissent, democracy, and the constitutional rights of citizens in Kashmir and elsewhere. Chapter Eight examines digital exclusion as a new form of constitutional victimisation, examining how the digitisation of welfare, identity, and civic life has created new forms of exclusion and deprivation for the poor and marginalised. And Chapter Nine sets out the framework for a constitutional response to the digital crisis, arguing for the specific constitutional provisions that any new Constitution of India must include to address the challenges of the digital age with genuine respect for the rights and dignity of all citizens.

Throughout, this part draws on the most recent developments in Indian law and policy, including the Digital Personal Data Protection Act Rules of November 2025, the India AI Governance Guidelines of the same month, the IT Amendment Rules of February 2026, the ongoing constitutional litigation about Aadhaar-based voter list revisions in Bihar in 2025, and the continuing global conversation about the constitutional dimensions of artificial intelligence and digital sovereignty. It situates these developments within the broader jurisprudential and philosophical frameworks that have animated the textbook as a whole: critical legal studies, postcolonial constitutional theory, Ambedkarite social constitutionalism, Rawlsian justice, and republican anti-domination theory.

The conclusion of this part, and the argument that it hopes to leave in the reader's mind, is simple and urgent. A country of 1.4 billion people cannot be constitutionally governed in the digital age by a document that knows nothing of the digital age. A people whose lives are shaped by algorithms, whose identities are mediated by biometric systems, whose access to welfare depends on digital connectivity, whose political environment is sculpted by AI-driven propaganda, and whose dissent is monitored by surveillance architectures of extraordinary power

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cannot be adequately protected by a Constitution that was designed for a world of paper files, physical meetings, typed correspondence, and the slow-moving apparatus of a mid-twentieth-century state. The new Constitution of India must be a digital constitution, a constitution that addresses the constitutional challenges of the age in which it will operate, not the age in which its predecessor was drafted.

CHAPTER ONE: THE CONSTITUTIONAL VOID IN WHICH DIGITAL INDIA EXISTS

1.1 Eight Hundred Million Citizens Without a Digital Constitution

Begin with a fact that should be constitutionally scandalous but that is rarely discussed with the gravity it deserves. Approximately 800 million people in India use the internet regularly. This is not a marginal fraction of the population. It is the majority of the adult population of the country. For these 800 million people, the internet is not a luxury or a novelty. It is the primary medium through which they access government services, receive welfare entitlements, conduct financial transactions, communicate with family and friends, seek healthcare information, participate in political discourse, consume news, and exercise what the Constitution of India formally describes as their fundamental rights of expression, association, religion, and personal liberty.

And yet the Constitution of India contains no provision that directly addresses the internet, digital communication, digital identity, data privacy, artificial intelligence, or any other aspect of the digital world in which the majority of Indian citizens now live their daily lives.

This is not merely a technical gap. It is a constitutional void of the most serious kind. It means that 800 million citizens, in their most significant and most routine daily activities, exist outside the direct protection of the constitutional framework that is supposed to be the supreme law of their land. They are governed in their digital lives not by constitutional provisions designed for the digital age but by a patchwork of ordinary legislation, executive rules, and judicial interpretation that is, at best, inadequate and, at worst, actively hostile to the rights the Constitution claims to guarantee them.

The Information Technology Act, 2000, which is the foundational legislation of India's digital governance framework, was enacted when the number of internet users in India was estimated at about 5 million. It was designed for a world of email and e-commerce, not for a world of social media, biometric identity systems, artificial intelligence, mass surveillance, algorithmic welfare administration, or the weaponisation of digital platforms for political communication. Its fundamental architecture, drawn from the UNCITRAL Model Law on Electronic Commerce of 1996, reflects the concerns of a pre-social-media, pre-smartphone era. Its conception of the internet was one of a commercial transaction medium, not a political public sphere, a surveillance infrastructure, or a new arena of state power.

The inadequacy of this foundation was apparent long before 2026. The Shreya Singhal v. Union of India judgment of 2015, in which the Supreme Court struck down Section 66A of the IT Act

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as an unconstitutional restriction on freedom of speech, demonstrated both the constitutional relevance of digital legislation and the constitutional inadequacy of the specific legislative provision. But the striking down of one provision did not create the constitutional framework that digital governance requires. It was a specific remedy for a specific excess, not a constitutional rethinking of the relationship between the state and the citizen in the digital domain.

The right to privacy judgment of 2017 in K.S. Puttaswamy v. Union of India was a more comprehensive constitutional statement. The nine-judge bench unanimously held that privacy is a fundamental right under Article 21 of the Constitution, and several of the concurring judgments developed sophisticated analyses of what privacy means in the digital age, of the constitutional significance of data protection, of the right to informational self-determination, and of the threat that mass surveillance poses to the exercise of other fundamental rights. The Puttaswamy judgment is the closest thing India has to a constitutional framework for the digital age, and it represents a genuine achievement of Indian constitutional adjudication.

But judicial recognition of privacy as a fundamental right is not the same thing as constitutional provision for the protection of privacy in the digital age. The Puttaswamy judgment established a principle: privacy is a fundamental right. It did not, because it could not, establish the legislative, institutional, and administrative framework necessary to operationalise that principle in conditions where the state and private corporations routinely collect, process, and use citizens' data on a massive scale, where biometric systems link identity to every aspect of daily life, where algorithmic systems make consequential decisions without human oversight, and where surveillance technologies operate at a level of sophistication that the framers of the Indian Constitution could not have imagined.

The gap between the constitutional principle established by Puttaswamy and the constitutional reality in which 800 million Indian internet users live their daily lives is, in 2026, larger than it has ever been. It is being filled not by genuine constitutional protection but by a combination of inadequate legislation, executive discretion, and the structural power imbalance between the state and its digital subjects.

1.2 The Inheritance Problem: Digital Governance on Colonial Foundations

The constitutional void in digital governance is not accidental. It is a product of the same structural problem that this textbook has identified throughout: that the Indian constitutional order is built on colonial foundations that were designed for the management of a subject population, not the liberation of a free people, and that this colonial DNA expresses itself in every domain of governance, including the governance of digital life.

The Indian state's approach to digital governance has been shaped from the beginning by three colonial inheritances that are visible in every piece of digital legislation enacted since independence.

The first inheritance is the administrative preference for total information access. The colonial state's power depended on information: surveys, census data, land records, criminal registration,

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fingerprint identification. The British Raj was, in many respects, an information state, a state whose power over subject populations was grounded in its capacity to gather, classify, and use information about those populations. The administrative systems designed for this information gathering, the census, the criminal tribes register, the identification of persons ordinance, the telegraph interception powers, were the templates from which post-independence Indian digital governance was developed. The impulse to gather maximum information about citizens, to link databases, to create comprehensive population registries, and to use the state's informational advantage as an instrument of governance is not a product of the digital age. It is a product of colonial administrative culture that the digital age has given new and vastly more powerful tools.

The second inheritance is the legal framework for surveillance and interception. The Indian Telegraph Act of 1885, enacted by the colonial government to allow interception of telegraph communications for purposes of public safety and emergency, remains in force in 2026. This law, which predates not only the internet but the telephone, the radio, and the television, authorises the central and state governments to intercept any message transmitted by telegraph (a category that has been interpreted to include telephone and digital communications) if the government considers it necessary in the interest of public safety or the occurrence of any public emergency. The Indian Telegraph Act is, in its essential architecture, a colonial surveillance statute. It was designed to allow the British government to monitor communications of Indian nationalists, labor organizers, and anyone else considered a threat to imperial order. It has never been replaced. It has been supplemented by the Information Technology Act's provisions on interception of electronic communications, but its colonial framework has not been dismantled. And it is under this colonial statute that the comprehensive electronic surveillance apparatus of the Indian state currently operates.

The third inheritance is the administrative culture of secrecy. The Official Secrets Act, 1923, another colonial-era statute, remains the foundational law governing the disclosure of official information. Its architecture is one of maximum secrecy by default: everything is secret unless the government specifically decides to make it public. This colonial architecture of secrecy has been partially challenged by the Right to Information Act, 2005, which creates a right of citizens to access information held by public authorities, but the RTI Act has been progressively weakened through exemptions, delays, and the failure to protect information commissioners from political pressure. In the digital domain, the culture of secrecy operates to prevent the kind of transparency about state surveillance, algorithmic decision-making, and data use that citizens in a genuine constitutional democracy would require as a minimum condition of accountability.

These three colonial inheritances, the impulse to maximum information gathering, the legal framework for surveillance, and the culture of administrative secrecy, provide the constitutional substrate on which digital India has been built. And their effect is to create a digital governance framework that is, in its essential architecture, not a framework for citizen empowerment but a framework for state power. The digitisation of India has been, in structural terms, a colonial project in new clothes: the expansion of the state's capacity to know about, classify, monitor, and control its subject population, carried out with tools that are incomparably more powerful than anything available to the Raj but driven by the same administrative impulse.

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1.3 Constitutional Interpretation as Inadequate Remedy: The Limits of the Puttaswamy Framework

The Puttaswamy judgment of 2017 is the most important constitutional statement about digital rights in Indian legal history. Its declaration that privacy is a fundamental right under Article 21, its development of a proportionality framework for the evaluation of state restrictions on privacy, and its recognition of the distinctive challenges that the digital age poses for the protection of privacy are genuine contributions to Indian constitutional jurisprudence that deserve acknowledgment.

But the Puttaswamy framework has four fundamental limitations that prevent it from being an adequate constitutional response to the challenges of the digital age.

The first limitation is the limitation of judicial review itself. The Puttaswamy judgment established that privacy is a fundamental right. But the enforcement of that right against state action requires individual litigants to bring cases to the High Courts or the Supreme Court, to demonstrate that a specific state action violated their specific privacy interest, and to navigate the procedural complexity and expense of constitutional litigation. For the 800 million Indian internet users whose privacy is routinely violated by state surveillance, algorithmic data processing, and commercial data extraction, this enforcement mechanism is effectively inaccessible. The poor, the illiterate, the tribal community member whose welfare data is being shared with private companies under Section 36 of the Digital Personal Data Protection Act, the small farmer whose financial data is being mined by an app linked to the government welfare system: none of these people can practically vindicate their Puttaswamy rights in a constitutional court.

The second limitation is the limitation of rights against the state in a world where private power poses an equal or greater threat to privacy. The Puttaswamy judgment, like all fundamental rights jurisprudence in India, is primarily directed against state action. The right to privacy as a fundamental right limits what the government can do to citizens. But in the digital age, the most systematic threats to privacy come not only from the government but from private corporations that collect, process, and monetise personal data on a scale that rivals and sometimes exceeds that of the state. The Puttaswamy framework, which operates primarily through vertical application of rights against the state, is inadequate to address the horizontal dimension of privacy violation in a world dominated by platform capitalism.

The third limitation is the limitation of proportionality review in conditions of technological opacity. The Puttaswamy judgment established that state restrictions on privacy must be assessed against a proportionality framework: the restriction must be sanctioned by law, it must pursue a legitimate aim, and it must be proportionate in the sense of being the minimum necessary to achieve the legitimate aim. This framework is designed for judicial review of specific state actions of a kind that a court can examine and evaluate. It is poorly adapted to the review of surveillance systems that operate continuously, invisibly, and at massive scale; of algorithmic systems whose decision-making processes are opaque even to their operators; of biometric databases whose uses are not disclosed to those whose data they contain; and of data processing

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agreements between government agencies and private corporations whose terms are treated as commercially confidential.

The fourth limitation is the limitation of a privacy framework that focuses on informational self-determination without addressing the structural power asymmetries that make formal privacy rights meaningless for the majority of citizens. The sophisticated right to privacy developed in Puttaswamy is essentially a liberal rights framework: it conceives of the privacy problem as a problem of individual control over personal information, and it addresses that problem through a framework of consent, purpose limitation, and proportionality. This framework assumes a citizen who is aware of the data being collected about her, who has the capacity to meaningfully consent or withhold consent, who can navigate the legal system to enforce her rights, and who exists in a relationship of rough equality with the state and the corporations she deals with. For the poor, the illiterate, the digitally excluded, the welfare-dependent, and the politically marginalised Indian citizen, none of these assumptions holds. The Puttaswamy framework, in other words, is a framework designed for a constitutional subject who is educated, connected, legally literate, and sufficiently empowered to exercise individual rights. It is inadequate for the majority of Indian citizens who are not that person.

1.4 The Emergency of the Digital Constitutional Moment

The constitutional inadequacy of the existing framework for digital governance has been recognised, at least rhetorically, by successive Indian governments since the Puttaswamy judgment. The legislative response has included the Digital Personal Data Protection Act of 2023, whose Rules were notified in November 2025, the India AI Governance Guidelines released by the Ministry of Electronics and Information Technology in November 2025, the IT Amendment Rules of February 2026, and the ongoing development of the Digital India Act, which is intended eventually to replace the IT Act of 2000.

Each of these legislative and regulatory developments deserves detailed examination, which this part provides in subsequent chapters. But before that examination, it is worth making a general observation about the nature of this legislative response: it is a response that addresses the form of the constitutional problem without addressing its substance. The laws and guidelines that the Indian government has enacted and proposed in the digital domain have been designed, in each case, to preserve and extend executive control over the digital domain while providing cosmetic protection for the rights of citizens. They are, in this sense, a continuation of the colonial administrative tradition in digital form: legislation that manages the digital population, that creates the appearance of rights protection, and that systematically privileges state and corporate power over citizen autonomy.

The constitutional moment that India's digital crisis demands is not the enactment of better ordinary legislation, though better ordinary legislation is certainly necessary. It is the incorporation of digital constitutional rights into a constitutional framework that is genuinely enforceable, genuinely accessible to all citizens regardless of their social position, genuinely independent of executive control in its interpretation and application, and genuinely designed to address the power asymmetries of the digital age. This constitutional moment requires a new constitution, not amendments to an existing one that is structurally incapable of providing it. And

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it requires that the new constitution be designed not by a committee of technocrats and administrators but through a genuinely participatory constituent process that includes the voices of the farmers, the tribal communities, the informal workers, the women, the Dalits, the Muslims, and all the other people whose digital lives are being shaped by decisions they have no part in making.

CHAPTER TWO: AADHAAR AND THE ARCHITECTURE OF BIOMETRIC AUTHORITARIANISM

2.1 The World's Largest Surveillance System and Its Constitutional Legitimation

The Aadhaar system, launched in 2009 by the Unique Identification Authority of India (UIDAI) under the chairmanship of Nandan Nilekani, is the world's largest biometric identification database. As of 2026, more than 1.3 billion people have been enrolled in the system, which collects ten fingerprints, both iris scans, and a facial photograph from each enrolled individual and links this biometric data to a unique 12-digit identification number, to demographic data, and to a growing range of other databases, services, and government systems.

The Aadhaar system was initially presented as a solution to a genuine and serious problem: the problem of identity verification for welfare delivery in a country where official identity documents were unavailable to a large proportion of the population, where welfare leakage (the diversion of welfare benefits through fraud and duplication) was a serious fiscal and social problem, and where the state lacked the administrative capacity to deliver services to the poorest and most geographically remote citizens. These were real problems, and the aspiration to use technology to solve them was not illegitimate in itself.

But the Aadhaar system that was actually built was not merely a welfare delivery tool. It was, from an early stage, conceived and used as a comprehensive population registration and identification system that extended the state's reach into every domain of citizens' lives in ways that went far beyond any welfare delivery requirement. And the constitutional framework within which it was built, validated, and expanded was inadequate, from the beginning, to the magnitude of the constitutional questions it raised.

The constitutional history of Aadhaar is, in itself, a microcosm of the constitutional failings that this textbook has documented throughout. The system was launched without statutory authority and operated for several years on the basis of executive orders alone, raising fundamental rule of law concerns. When the Aadhaar Act was eventually enacted in 2016, it was passed as a Money Bill under Article 110 of the Constitution, a constitutional classification that allowed it to bypass the Rajya Sabha, where the government did not have a majority. The classification of the Aadhaar Act as a Money Bill was challenged in the Supreme Court and was upheld by the majority in the 2018 Aadhaar judgment, in an opinion that legal scholars have almost universally criticised as constitutionally indefensible. Justice D.Y. Chandrachud, in his powerful dissent, argued that the Act could not legitimately be classified as a Money Bill because it established an entirely new governance architecture, created new institutions, imposed new obligations on both

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the state and private citizens, and had consequences extending far beyond the fiscal matters that the Money Bill procedure is designed for.

The use of the Money Bill procedure to bypass the upper house of Parliament on legislation of this constitutional significance was a textbook example of what scholars call "constitutional hardball," the use of formally constitutional procedures to achieve anti-constitutional ends. By passing the Aadhaar Act as a Money Bill, the government avoided the scrutiny of the Rajya Sabha and foreclosed the possibility of meaningful parliamentary debate about the constitutional implications of a system that would affect the lives of every Indian citizen. This is precisely the kind of institutional manipulation that a constitutional order built for genuine democracy should prevent but that the Indian constitutional order, with its excessive concentration of power in the executive and its inadequate mechanisms for parliamentary accountability, enables.

2.2 Aadhaar as Technology of the Colonial Gaze

The theoretical framework that best illuminates the constitutional significance of Aadhaar is not the liberal rights framework of privacy as informational self-determination. It is the framework of surveillance studies and postcolonial theory, particularly the analysis of identification and registration as technologies of colonial power.

The colonial state was, in important respects, a registration state. It needed to know who its subjects were, where they were, what their social characteristics were, and how they related to the property, tax, and administrative systems of the empire. The colonial instruments of registration were varied: the census, which classified the population by religion, caste, language, and occupation; the criminal tribes legislation, which classified entire communities as inherently criminal and subjected them to systematic registration and surveillance; the Foreigners Registration Act, which required non-citizens to register and document their presence; the finger-print identification systems introduced by Edward Henry in Bengal in the 1890s and subsequently adopted globally. All of these instruments served the colonial state's fundamental need to make the subject population legible, to use James Scott's term, to render a diverse, complex, and often resistant population into a form that administrative power could act upon.

Aadhaar is, in this theoretical framework, a successor technology to the colonial registration apparatus. Like the colonial census, it classifies and records the entire population. Like the criminal tribes registration, it creates a system in which the inability to present identification becomes the basis for exclusion from civil life. Like the fingerprint identification systems of the Raj, it links biometric markers to a state-controlled database that is the ultimate arbiter of identity. And like all colonial registration systems, it creates a form of population legibility that primarily serves the needs of the state rather than the rights of the individuals who are registered.

This analysis is not merely metaphorical. The lineage is documented. The genealogy of biometric identification in India runs directly from the colonial fingerprint system through the criminal registration systems of the post-independence security apparatus to the biometric identification of Aadhaar. The UIDAI was designed by technologists with a primarily administrative rather than rights-based perspective, and its founding documents reflect a concern with system efficiency, fraud prevention, and state capability that treats the concerns of

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individual citizens primarily as obstacles to administrative effectiveness rather than as constitutional values to be accommodated.

The constitutional problem with this approach is fundamental. A state that treats the registration and identification of its citizens primarily as a tool of administrative efficiency rather than as an exercise of power that must be constrained by constitutional rights is a state that has not understood the constitutional relationship between citizen and sovereign. In a genuine constitutional democracy, the state does not identify and register its citizens for the state's convenience. The state provides identification as a service to citizens, for their use, on terms that they have meaningfully consented to, in a system that they control and that serves their interests. The difference between these two conceptions of identification is not technical. It is constitutional. And Aadhaar has been built, from the beginning, on the former conception rather than the latter.

2.3 The Welfare Exclusion Crisis: When Biometric Failure Becomes a Constitutional Violation

The most immediate and visceral constitutional consequence of the Aadhaar architecture has not been surveillance, though surveillance is a pervasive concern. It has been exclusion. The linking of welfare entitlements to Aadhaar-based authentication has created a system in which the failure of the biometric system to recognise a citizen, through a database error, a connectivity failure, a biometric reading error due to worn fingerprints from manual labour, or a software glitch, results in that citizen being denied the food, fuel, housing, or income support to which she is constitutionally and legally entitled.

The evidence of this exclusion is extensive and well-documented. Studies by the Research Institute for Compassionate Economics and others have documented hundreds of deaths in Jharkhand and other states that were directly attributable to starvation following Aadhaar-based denial of ration card entitlements. The case of Santoshi Kumari, an eleven-year-old girl in Simdega, Jharkhand, who died of starvation in September 2017 because her family's ration card had been cancelled following Aadhaar seeding failures, became a symbol of the human cost of biometric welfare administration. Her case was not exceptional. It was representative of a systematic pattern of exclusion.

From the perspective of constitutional law, Aadhaar-based denial of welfare entitlements is a direct violation of multiple fundamental rights. The right to life under Article 21, which the Supreme Court has interpreted to include the right to food, the right to livelihood, and the right to dignity, is violated when a citizen is denied food entitlements by a biometric system failure. The right to equality under Article 14 is violated when citizens with worn fingerprints, elderly citizens whose biometrics have deteriorated, and tribal communities whose fingerprint patterns are difficult for biometric readers to capture, are systematically disadvantaged in their access to constitutional entitlements. The prohibition on denial of equality by the state is not satisfied by a system that applies the same formal authentication procedure to all citizens when that procedure systematically fails for the most vulnerable.

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The constitutional analysis of Aadhaar-based exclusion has been advanced most powerfully in the litigation that has surrounded the system since its launch. But the judicial response to the exclusion crisis has been inadequate. The Supreme Court's majority judgment in the 2018 Aadhaar case acknowledged the exclusion problem but held that the system's benefits outweighed its costs, a utilitarian analysis that is difficult to reconcile with a rights-based constitutional framework under which the fundamental rights of even a single citizen cannot be sacrificed for aggregate social benefit. The dissenting judgment of Justice Chandrachud offered a more rights-consistent analysis, recognising that a system that excludes the most vulnerable from their constitutionally guaranteed entitlements cannot be constitutionally justified by its administrative efficiency.

In 2025, the constitutional dimensions of Aadhaar-based exclusion took a new and deeply troubling form. The Election Commission of India declared, in the context of the Bihar Special Intensive Revision exercise, that Aadhaar would no longer be accepted as sufficient proof of citizenship for voter list registration. This decision, which affected millions of citizens who had been relying on Aadhaar as their primary identity document for the purpose of electoral participation, demonstrated that the identity architecture on which the Indian state had been building its digital governance for over a decade was fragile, politically manipulable, and constitutionally unreliable as a basis for the most fundamental of democratic rights. When the system that the state has made the foundation of digital identity is suddenly declared insufficient for electoral purposes by the body that administers elections, the citizens whose only reliable identity document is Aadhaar are left in a constitutional limbo that the existing constitutional framework has no mechanism to resolve.

2.4 The Mission Creep of Biometric Identity: From Welfare to Total Surveillance

The history of Aadhaar is a history of mission creep of the most constitutionally significant kind. The system was launched as a welfare delivery tool. It has progressively become the foundation of a total identification architecture that touches every aspect of Indian digital life.

The expansions of Aadhaar's use, many of which were struck down in part by the 2018 Supreme Court judgment, included mandatory linkage to mobile phone connections (creating a direct connection between a citizen's biometric identity and every digital communication she makes), mandatory linkage to bank accounts (creating a connection between biometric identity and every financial transaction), linkage to the National Register of Citizens (creating a connection between biometric identity and citizenship status that the Supreme Court in the 2018 judgment found impermissible), linkage to school enrollment (creating a connection between biometric identity and access to education), and proposed linkage to health records under the National Digital Health Mission.

Even after the 2018 judgment struck down several of these mandatory linkages, the creep of Aadhaar into new domains has continued. The government's approach has been to use informal pressure, conditional access to services, and technical integration to achieve de facto linkages that were not permitted as formal mandates. The result is a system in which the practical ability to participate in Indian civic, economic, and social life increasingly depends on Aadhaar, regardless of what the Supreme Court has formally said about the limits of mandatory linkage.

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The January 2025 decision to allow private companies access to the Aadhaar authentication layer, creating a regulatory sandbox for private sector use of biometric identity verification, represents a new and particularly alarming phase of this mission creep. When private corporations can authenticate citizens' biometric identities, and can link that biometric identity to commercial data about consumer behaviour, financial history, and social connections, the Aadhaar system becomes not just a government surveillance tool but a tool for corporate surveillance of the most intimate and comprehensive kind. The connection between biometric identity and commercial data creates a profile of each citizen that is more comprehensive, more personal, and more practically powerful than anything the colonial registration state achieved. And the constitutional framework that was designed for a state that knows less about its citizens than they know about themselves is being asked to govern a world where both the state and its corporate partners know vastly more about each citizen than the citizen herself may realise.

The constitutional implications of this development are not adequately addressed by the proportionality framework of the Puttaswamy judgment. They require a constitutional provision that recognises biometric data as a category of extraordinary constitutional sensitivity, that requires the highest level of constitutional justification for its collection and use, that prohibits its use for purposes beyond the specific, narrowly defined purpose for which it was collected, that requires genuinely informed and freely given consent for each use, and that provides effective remedies for violations that are accessible to all citizens regardless of their resources. No such constitutional provision currently exists. None can be created by judicial interpretation alone. It requires the constitutional reconstruction that this part of the textbook argues for.

CHAPTER THREE: THE SURVEILLANCE STATE - FROM COLONIAL WIRETAPPING TO ALGORITHMIC CONTROL

3.1 The Genealogy of Indian Surveillance: A Colonial Inheritance

The proposition that the Indian state's surveillance apparatus has colonial roots is not a rhetorical claim. It is a historical fact with contemporary constitutional significance. Understanding the lineage of Indian surveillance is essential to understanding why the constitutional framework has been so inadequate to address it and why constitutional reconstruction is necessary.

The British colonial state developed a sophisticated surveillance apparatus over the course of the nineteenth and twentieth centuries. The Criminal Investigation Department (CID), established in 1902, created a national network of intelligence gathering that monitored the activities of political organisations, labor movements, religious communities, and individual subjects considered potentially subversive. The Indian Intelligence Bureau, established in 1887, was originally created to gather intelligence about the tribal frontier regions and gradually expanded to monitor the broader nationalist movement. The postal censorship system allowed the interception and examination of mail. The Indian Telegraph Act of 1885 authorised the interception of telegraph communications. The Press Act of 1910 and the Sedition Law of 1870 combined physical and informational surveillance with legal powers to suppress dissent.

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The nationalist leaders who became the founders of independent India were themselves targets of this colonial surveillance apparatus. Nehru, Gandhi, Patel, Ambedkar, and virtually every significant figure of the independence movement had colonial intelligence files, had their correspondence intercepted, and had their movements tracked. They knew, from personal experience, what state surveillance meant for political freedom. And yet the constitutional framework they created did not dismantle the colonial surveillance apparatus. They retained the Indian Telegraph Act. They retained the Intelligence Bureau, merely transferring its control from the colonial government to the government of independent India. They retained the Official Secrets Act. They created Article 22, which allowed preventive detention. And they created no constitutional protection against surveillance itself.

This is the foundational paradox of Indian surveillance and constitutional rights. The people who created the Constitution knew, personally and painfully, what it meant to be subject to state surveillance. And they created a constitution that did not protect citizens from it. The reason, as with so many of the colonial inheritances examined in this textbook, is the pragmatic-administrative logic of a government committed to centralised control of a newly independent country that it perceived as fragile and threatened. The surveillance apparatus was too useful to dismantle, and the political incentives for retaining it, for every government, have always exceeded the constitutional incentives for limiting it.

3.2 The Contemporary Surveillance Architecture: A System Without Constitutional Foundation

The surveillance architecture of the contemporary Indian state is a layered system of extraordinary complexity and reach that operates without adequate statutory framework, without meaningful parliamentary oversight, without independent judicial scrutiny, and without the knowledge or consent of the citizens it monitors.

The key components of this architecture include the Central Monitoring System (CMS), launched in 2013, which provides the intelligence agencies and law enforcement bodies with direct access to telecommunications data without requiring the involvement of the telecom operators. Prior to the CMS, interception required a formal request to the telecom operator, which created at least a formal paper trail and a minimum of procedural accountability. The CMS bypasses this procedural requirement entirely, allowing direct access to the communications of any person at any time with no mechanism of independent oversight.

The Network Traffic Analysis system (NETRA), operated by the Centre for Artificial Intelligence and Robotics (CAIR) under the Defence Research and Development Organisation (DRDO), monitors internet traffic and filters for keywords, phrases, and patterns that are flagged as potentially concerning. The system operates continuously, scanning email, social media, web browsing, and other internet traffic in real time.

The National Intelligence Grid (NATGRID), which links databases from twenty-one security and intelligence agencies including income tax records, banking data, travel records, telecom data, immigration records, and credit card information, provides a comprehensive picture of any individual's financial, communication, and physical movements to authorised security agencies.

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The Social Media Monitoring Programme, for which the government invited bids in 2019 and which has been developed in various forms since, allows government agencies to monitor and analyse social media posts, to track the spread of particular narratives, to identify individuals behind anonymous accounts, and to map social networks of influence and organisation.

The facial recognition systems deployed at airports under the DigiYatra programme, at railway stations, and in various urban areas by different state police forces allow real-time identification of individuals in public spaces without their knowledge or consent. The accuracy problems of these systems, which have been documented in multiple contexts to produce significantly higher error rates for women, for darker-skinned individuals, and for older people, mean that facial recognition-based identification can lead to false positives with serious consequences for the people wrongly identified.

The Pegasus spyware revelations of 2021, which revealed that the Indian government had used the Israeli NSO Group's military-grade spyware to infect the phones of journalists, activists, lawyers, opposition politicians, and even Supreme Court judges and their associates, demonstrated the willingness of the Indian state to use the most intrusive available surveillance technology against targets who were not criminal suspects but whose professional or political activities were inconvenient for the government. The Supreme Court of India appointed a technical committee to investigate the Pegasus allegations, and the committee's report, submitted in 2023, was inconclusive largely because the government refused to cooperate with the investigation. The very fact that the government refused to cooperate with a Supreme Court-appointed investigation into whether it had illegally surveilled journalists and judges is itself a constitutional statement of the most alarming kind.

3.3 The Legal Framework for Surveillance: Colonial Statutes and Executive Discretion

The legal framework within which all of this surveillance operates is, as noted above, primarily the Indian Telegraph Act of 1885, supplemented by the Information Technology Act of 2000 and the rules made under it. Neither of these legislative frameworks provides the kind of constitutional protection for citizens' communications that the Puttaswamy judgment requires.

The Indian Telegraph Act provides that the government may intercept any message transmitted by telegraph if it is satisfied that such action is necessary in the interests of public safety or in the occurrence of any public emergency. The standards for this satisfaction are not specified. There is no requirement of judicial authorisation. There is no requirement of independent oversight. There is no requirement of notification to the target, even after the fact. There is no time limit on interception orders. There is no requirement to destroy intercepted material after the purpose for which it was collected has been served. The law that authorises the interception of the digital communications of 800 million Indian internet users was designed in 1885 for the interception of telegraph messages, requires no judicial authorisation, and provides no meaningful protection against abuse.

This statutory framework has been challenged repeatedly in the courts. In the landmark judgment in People's Union for Civil Liberties v. Union of India (1997), the Supreme Court held that telephone tapping constitutes a serious infringement of the right to privacy under Article 21, and

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issued procedural guidelines for the authorisation of interception orders, requiring that orders be issued by the Home Secretary and be reviewed by a committee. But these procedural guidelines, while better than nothing, are not constitutional safeguards. They are administrative requirements that can be modified or disregarded without constitutional amendment, that do not provide for independent judicial review, and that have been widely ignored or circumvented in practice.

The Puttaswamy judgment of 2017 established, with constitutional authority, that surveillance must meet a proportionality test: it must have a legitimate aim, it must be rationally connected to that aim, and it must be the least restrictive means of achieving the aim. This constitutional standard is incompatible with the existing statutory framework for surveillance, which imposes no substantive limitation on the purposes for which interception can be authorised, requires no demonstration that interception is the least restrictive means of achieving any particular objective, and provides no mechanism for independent review of the claim that a particular interception is necessary.

The government has been aware of this constitutional incompatibility for years. The promised legislative reform, which was to take the form of a Surveillance Reform Bill or a comprehensive data protection law with surveillance provisions, has not materialised. The Digital Personal Data Protection Act of 2023, which is examined in detail in Chapter Four, explicitly exempts government data processing for national security purposes from its scope. The India AI Governance Guidelines of November 2025 do not address surveillance at all. The IT Amendment Rules of February 2026 address content moderation rather than surveillance. The promise of surveillance reform has been continuously deferred because genuine surveillance reform would require the government to constrain its own power in ways that no government finds comfortable and that the existing constitutional framework provides no mechanism to compel.

3.4 Internet Shutdowns as Systematic Constitutional Violations

The most visible and the most dramatic instrument of digital authoritarian governance in India is the internet shutdown. India leads the world in the frequency and duration of internet shutdowns. According to the Internet Society and Jio Haps (a tracking organization), India ordered more internet shutdowns than any other country in the world in every year from 2018 through 2024, and preliminary data for 2025 suggests that this pattern has continued.

Internet shutdowns in India are ordered primarily by state governments or by the central government under Section 144 of the Code of Criminal Procedure (the power to impose restrictions to prevent unlawful assembly) or under the Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules of 2017, which were issued under the Indian Telegraph Act. The 2017 Rules require that shutdown orders be issued by a senior government official, reviewed by a committee within five days, and documented with reasons. But in practice, the orders are routinely issued without adequate justification, reviewed by committees that are themselves executive bodies without independent authority, and maintained for periods ranging from hours to years.

The most extreme case is Kashmir, where the internet was shut down for over 552 days following the abrogation of Article 370 in August 2019, a shutdown that was the longest internet

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blackout in a democracy in recorded history. The Supreme Court addressed the Kashmir shutdown in Anuradha Bhasin v. Union of India (2020), holding that the freedom of speech and expression under Article 19(1)(a) extends to the internet, that internet shutdowns must be reviewed on the grounds of necessity and proportionality, and that shutdown orders must be made public. But the Supreme Court also declined to immediately lift the Kashmir shutdown, holding instead that it could be reviewed on the merits. The Kashmir shutdown continued for several more months after the Anuradha Bhasin judgment, demonstrating the gap between constitutional pronouncement and constitutional reality that characterises this entire domain of law.

The constitutional analysis of internet shutdowns is not complex. When the government shuts down the internet in a region, it simultaneously: violates the freedom of speech and expression of every person in that region (they cannot speak or receive information through the primary medium of modern communication); violates the right to access information, which the Supreme Court has recognised as an aspect of both Article 19(1)(a) and Article 21; violates the right to carry on trade and occupation under Article 19(1)(g), since the digital economy makes internet access essential to economic participation; violates the right to health and medical information, since digital health services, telemedicine, and health information systems are inaccessible during shutdowns; and, in the extreme case of Kashmir, violates the right to life itself by disrupting emergency services, medical communication, and the ability of people in crisis situations to summon help.

Yet internet shutdowns continue, routinely and systematically, ordered by executive officials without judicial oversight, maintained for extended periods, and targeted disproportionately at regions with significant minority populations, at areas where political protest is occurring, and at times when the government wishes to control the information environment. They are the digital equivalent of the colonial curfew, an administrative weapon used to control populations rather than a public safety measure used in genuine emergencies, and they are used as casually and as frequently as the colonial curfew was used, with the same disregard for the rights of the people they affect.

CHAPTER FOUR: THE DATA PROTECTION PARADOX - LAW AS INSTRUMENT OF DOMINATION

4.1 The Promise and the Betrayal: How India's Data Protection Law Was Captured

The enactment of the Digital Personal Data Protection Act (DPDPA) in August 2023, after a process of development that stretched over more than five years, three different bills, and extensive public consultation, was presented by the government as a landmark achievement of digital governance: India's first comprehensive data protection law, bringing India into alignment with global standards of data privacy, empowering citizens with rights over their personal data, and providing a framework for the accountability of the public and private entities that process personal data.

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None of these claims was entirely false. The DPDPA does create a legal framework for data protection where none previously existed. It does give citizens some rights over their personal data. It does impose some obligations on data fiduciaries. And it does create an institutional mechanism, the Data Protection Board, for enforcement.

But a careful reading of the DPDPA, particularly in combination with the Digital Personal Data Protection Rules notified in November 2025, reveals a law that has been fundamentally shaped by the interests of the government and of large corporate data processors rather than by the interests of the citizens whose data it purports to protect. The result is a law whose nominal rights framework conceals a systematic architecture of state and corporate privilege.

The most fundamental problem is the government exemption. Section 36 of the DPDPA provides that the Central Government may, by notification, exempt any instrumentality of the state from the application of the Act, or from any provision of the Act, in the interests of sovereignty and integrity of India, the security of the state, friendly relations with foreign states, the maintenance of public order, or the prevention of incitement to any cognizable offence. Rule 22 of the DPDPA Rules 2025 operationalises this exemption by allowing the government to compel data fiduciaries to share personal data with authorised government officials, with no requirement of judicial authorisation, no mechanism of independent oversight, and a prohibition on the data fiduciary disclosing that such a demand has been made.

This government exemption effectively places the state's most important uses of personal data, including surveillance, intelligence gathering, law enforcement, national security monitoring, and counter-terrorism, entirely outside the data protection framework. The law that is supposed to protect citizens from data exploitation explicitly protects the state's most significant data exploitation activities from legal constraint. This is not a regulatory gap or an oversight. It is a deliberate design choice that reflects the government's determination to retain unrestricted access to citizens' data for state purposes while appearing to regulate private sector data processing.

The second fundamental problem is the institutional design of the Data Protection Board. The DPDPA creates a Data Protection Board as the enforcement authority for data protection complaints. But the Board is not an independent constitutional authority. Its members are appointed by the Central Government and can be removed by the Central Government. The processes for appointment and removal lack the security of tenure and independence from executive influence that genuine regulatory independence requires. A data protection authority that is appointed by and removable by the government whose data processing it is supposed to regulate is not an independent regulator. It is an administrative body whose independence is structurally compromised by its institutional relationship with the executive.

Compare this to the model of genuinely independent data protection authorities in jurisdictions with effective data protection regimes. The Information Commissioner's Office in the United Kingdom, the Commission Nationale de l'Informatique et des Libertés in France, and the Data Protection Commissioner in Ireland are all statutory bodies with independent appointment processes, fixed terms, and freedom from executive interference in their regulatory decisions. The DPDPA's Data Protection Board has none of these structural features of independence. It is, in institutional design, closer to the bureaucratic adjudicatory bodies of the Indian administrative

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system, which are routinely characterised by dependence on the executive, delays in adjudication, and inadequate protection of individual rights.

4.2 Consent as Fiction: The Architecture of Manufactured Agreement

The DPDPA and its Rules establish a consent-based data protection framework, following the model of the European General Data Protection Regulation (GDPR) and other contemporary data protection instruments. Citizens are supposed to have meaningful control over the processing of their personal data through the mechanism of informed consent: before their data is processed, they must be given clear information about what is being processed, why, by whom, and for how long, and they must voluntarily agree to this processing.

This consent framework is constitutionally important in principle. If citizens could genuinely exercise meaningful control over the use of their personal data through informed consent, the consent framework would represent a real contribution to the constitutional value of informational self-determination that the Puttaswamy judgment established. But the consent framework of the DPDPA is, in the conditions of digital India, largely fictional.

The first reason it is fictional is the structural inequality between data processors and data subjects. The major data fiduciaries that the DPDPA is supposed to regulate are large corporations with sophisticated legal, technical, and marketing teams dedicated to constructing consent frameworks that satisfy the legal minimum while maximising data collection and use. The data subjects from whom consent is being sought are typically individuals who lack the legal literacy to understand the terms they are consenting to, who lack the practical capacity to negotiate any modification of those terms, and who lack any realistic alternative to accepting those terms if they wish to access the services in question. In these conditions, consent is not a real exercise of informational self-determination. It is the formal legitimation of a power relationship in which the data subject has no meaningful choice.

The second reason the consent framework is fictional in the Indian context is the government-as-data-fiduciary problem. A very large proportion of data processing in India is done not by private corporations but by government agencies in connection with the delivery of welfare, health, education, identity, and other public services. For these government-as-data-fiduciary relationships, the consent framework is particularly inadequate, because citizens who depend on government services for their basic needs have no meaningful choice about whether to consent to the government's use of their data. A citizen who must register with Aadhaar to receive food rations, who must provide banking data to receive direct benefit transfers, who must submit health data to access public health services, cannot meaningfully withhold consent to the government's use of that data without forgoing entitlements that the state is constitutionally and legally obligated to provide. This is what scholars call "coerced consent" or "compelled consent," and it is the antithesis of the informed, voluntary, and freely given consent that a genuine data protection framework requires.

The third reason the consent framework is fictional is the scope of the government exemption discussed above. Even if consent were genuinely meaningful for the data processing activities of private corporations, the most important and most sensitive data processing activities of the

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Indian state, the surveillance, the intelligence gathering, the security monitoring, are entirely exempt from the consent requirement. Citizens do not consent to having their communications monitored under the Indian Telegraph Act. They do not consent to having their financial data accessed by NATGRID. They do not consent to having their social media activity monitored by government contractors. The consent framework applies to the commercial activities of data processors, and even there it is structurally compromised, but it does not apply at all to the state's most significant exercises of information power.

4.3 The 2025 Rules and the Architecture of Control

The Digital Personal Data Protection Rules, notified in November 2025, provide the detailed operational framework for the DPDPA. Their reception among data privacy advocates, civil society organisations, and constitutional scholars has been largely critical, and that criticism deserves serious constitutional engagement.

The most significant constitutional concern about the 2025 Rules is the framework for government access to personal data. Rule 22, as noted above, allows the government to compel data fiduciaries to share personal data with authorised officials for a list of purposes defined in the Seventh Schedule. These purposes include national sovereignty and security, statutory functions, and legal obligations, all categories of extraordinary breadth that can be interpreted to cover virtually any government information requirement. The requirement that the data fiduciary not disclose that such a demand has been made creates a framework of mandatory secrecy that prevents citizens from knowing when their data has been accessed by the government, prevents journalism and civil society scrutiny of government data access practices, and ensures that the regime of government data access is insulated from the democratic accountability that a constitutional democracy requires.

This architecture of mandatory secrecy in government data access has been criticised by constitutional scholars as incompatible with the transparency requirements that the Puttaswamy judgment's proportionality framework implies. If citizens cannot know that their data has been accessed, they cannot challenge that access in any forum. If civil society cannot examine the pattern of government data demands, it cannot hold the government accountable for the exercise of its data access powers. If courts cannot be informed about the scale and scope of government data access, they cannot provide constitutional review of that access. The effect of the mandatory secrecy requirement is to place government data access completely outside the legal and constitutional accountability framework, which is precisely the kind of unaccountable exercise of state power that the Puttaswamy right to privacy was supposed to prevent.

The absence of data localisation requirements in the 2025 Rules is a separate but related constitutional concern. Several data protection frameworks in other jurisdictions require that personal data of citizens be stored within the territorial jurisdiction of the country, on the ground that data stored on foreign servers is subject to the laws and authority of foreign states and may not be accessible to Indian courts for the purpose of enforcing citizens' rights. The absence of strong data localisation requirements in the Indian framework means that significant quantities of Indian citizens' personal data may be stored in jurisdictions where Indian constitutional law has

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no practical reach, and where the remedies that Indian courts might theoretically provide are practically unenforceable.

CHAPTER FIVE: ARTIFICIAL INTELLIGENCE, ALGORITHMIC GOVERNANCE, AND THE CONSTITUTIONAL CRISIS OF THE MACHINE STATE

5.1 The Algorithm as Decision-Maker: When the Constitution Meets the Machine

The governance of artificial intelligence is the most rapidly evolving dimension of the constitutional crisis of digital India. As of early 2026, AI systems are being used across Indian governance in ways that would have seemed remarkable just a decade ago: to allocate welfare entitlements and benefits, to assess creditworthiness for government loan programmes, to identify potential tax evaders, to monitor social media for "anti-national" sentiment, to guide sentencing recommendations in criminal cases, to screen job applications for government positions, to allocate students to schools and colleges, and to make or influence decisions in virtually every domain of public administration.

Each of these uses of AI in governance raises constitutional questions that the existing framework is inadequate to address. When an algorithm decides that a citizen is not entitled to a welfare benefit, who has made that decision for purposes of constitutional accountability? When an AI system classifies a social media post as a national security threat and triggers surveillance, what constitutional standard has been applied? When a predictive policing system identifies a neighbourhood as high-risk and directs police resources accordingly, what is the constitutional basis for that resource allocation? When a government credit scoring system assigns a low credit score to a citizen based on opaque algorithmic factors, what is the citizen's constitutional right to challenge that assessment?

These questions do not have clear answers under the existing constitutional framework, because the existing constitutional framework was designed for a world in which decisions were made by human beings who could be identified, whose reasoning could be required, who could be held accountable through legal processes, and who were subject to the constitutional obligations of public officials. The algorithmic decision-maker does not fit within this framework. It has no intent that can be evaluated. It has no discretion in the familiar sense. It cannot be called to testify or cross-examined about its reasoning. Its decision-making process, even when partially transparent, involves relationships between variables of a kind that human comprehension cannot fully grasp. And its errors, which are systematically distributed in ways that disadvantage particular demographic groups, cannot be easily attributed to the kind of bad faith, discrimination, or negligence that constitutional accountability frameworks are designed to address.

5.2 The India AI Governance Guidelines 2025: Reform as Rhetoric

The India AI Governance Guidelines released by the Ministry of Electronics and Information Technology in November 2025 are the most comprehensive statement of Indian AI policy to

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date. They reflect genuine engagement with the constitutional and ethical questions that AI governance raises, draw on a substantial body of global regulatory thinking including the EU AI Act, the OECD AI Principles, and the UNESCO Recommendation on the Ethics of AI, and propose institutional mechanisms, including an AI Governance Group, a Technology and Policy Expert Committee, and an AI Safety Institute, that represent at least an acknowledgment of the need for governance structures.

But the Guidelines have a fundamental character that limits their constitutional significance: they are not law. They are explicitly described as voluntary guidelines that do not create enforceable legal obligations. Data processing entities and AI developers are encouraged, not required, to follow them. Their seven foundational principles, which emphasise trust, human-centricity, inclusion, accountability, transparency, proportionality, and innovation, are aspirations rather than rights. And the institutional mechanisms they propose are advisory and monitoring bodies, not regulatory authorities with enforcement powers.

This "light-touch" approach to AI governance, which the Guidelines themselves describe as prioritising innovation over prescriptive regulation, reflects a policy choice that deserves critical constitutional examination. The argument for light-touch AI governance is that over-regulation of AI will disadvantage Indian technology development relative to competitors in other jurisdictions, will prevent the beneficial uses of AI in areas like healthcare, agriculture, and education, and will impose compliance costs that will limit innovation. These are legitimate policy concerns, but they are policy concerns, not constitutional ones. And when the constitutional rights of citizens are at stake, policy concerns about innovation cannot be used to justify the absence of enforceable constitutional protection.

The constitutional critique of the light-touch approach to AI governance is most forcefully made by reference to the groups who are most likely to be harmed by unregulated algorithmic decision-making. The evidence from global deployments of AI in governance contexts is consistent: algorithmic systems trained on historical data reproduce and often amplify the biases embedded in that data, systematically disadvantaging the groups that were historically disadvantaged. In the Indian context, this means that algorithmic systems used in welfare allocation, credit assessment, criminal justice, and educational access are likely to systematically disadvantage Dalits, Adivasis, Muslims, women, and the poor, reproducing the social hierarchies of caste, religion, and class in the language of statistics and machine learning. The light-touch approach to AI governance, which leaves these biases to be addressed through voluntary commitments, self-certification, and post-hoc monitoring, is constitutionally inadequate to the protection of the fundamental rights of these groups.

The Artificial Intelligence (Ethics and Accountability) Bill, 2025, introduced as a Private Member's Bill in the Lok Sabha in December 2025, represents a more robust approach to AI governance. The Bill proposes mandatory ethical reviews for AI systems used in high-risk contexts, bias audits, developer obligations regarding transparency and explainability, restrictions on certain uses of AI in law enforcement and employment, and an independent Ethics Committee for AI with enforcement powers. While the Bill has not been enacted and faces significant political obstacles, it represents the kind of constitutional thinking about AI governance that the existing framework lacks.

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5.3 Algorithmic Accountability and the Constitutional Right to Explanation

One of the most practically significant constitutional questions raised by algorithmic governance is the question of the right to explanation: when an AI system makes or influences a decision that affects a citizen's rights, does that citizen have a constitutional right to an explanation of how and why that decision was made?

The constitutional basis for such a right is not difficult to establish within the existing framework. Article 21's right to life includes the right to dignity and to fair treatment by the state. Article 14's guarantee of equality before the law includes the right not to be treated in an arbitrary manner by the state. Article 19(1)(a)'s guarantee of freedom of speech and expression includes the right to know why one's speech has been classified as dangerous. And the Puttaswamy judgment's recognition of data protection as a constitutional value implies a right to know how one's personal data is being used to make decisions about one's entitlements, status, and opportunities.

But the courts have not yet fully developed this right to explanation in the context of algorithmic governance, and even if they do, the practical enforceability of such a right against opaque AI systems that use proprietary algorithms is deeply uncertain. The "black box" problem of AI decision-making, where the connection between inputs and outputs cannot be explained in terms that human beings can meaningfully understand and evaluate, means that even a formal right to explanation may be satisfied by explanations that are technically accurate but humanly unintelligible. And the combination of opacity and speed that characterises algorithmic decision-making means that by the time a citizen discovers that an algorithmic system has made a decision affecting her rights, and by the time she navigates the legal process to challenge that decision, its consequences may already be irreversible.

The constitutional framework for AI governance that India needs must therefore go beyond the provision of individual rights to challenge specific algorithmic decisions. It must address the design and deployment of algorithmic systems at the front end, requiring that high-risk AI systems be designed to be transparent and explainable before they are deployed, that they be tested for bias and discriminatory impact before and during deployment, that they be subject to independent audit by bodies with genuine independence from both government and industry, and that the results of those audits be public and accessible to civil society. It must require that certain categories of decision, those most consequential for the rights and dignity of citizens, not be made by algorithmic systems at all, or be made by algorithmic systems only with the possibility of human review and override. And it must create institutional mechanisms for the democratic governance of AI that are genuinely independent, genuinely participatory, and genuinely accountable to the citizens whose lives AI systems affect.

5.4 AI and the Production of Democratic Manipulation

The most politically significant dimension of the AI governance crisis in India is the use of AI technologies for the manipulation of democratic processes. This is not a hypothetical concern. It is a documented reality that has shaped Indian electoral politics since at least 2014 and that has become significantly more sophisticated and more concerning in the years since.

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AI-driven political communication has several dimensions. The most obvious is the use of targeted political messaging, in which AI systems analyse the data profiles of individual voters and deliver tailored political messages designed to resonate with their specific concerns, fears, identities, and political leanings. This kind of micro-targeting, developed to a high level of sophistication by political parties working with commercial data analytics firms, represents a form of political communication that is fundamentally different from the broadcast communication of earlier eras. It is invisible to public scrutiny. It does not need to be internally consistent. It can simultaneously tell different things to different communities. And it can be tuned to exploit the specific anxieties and identities of each targeted individual in ways that are simultaneously more effective and more constitutionally problematic than traditional political communication.

The second dimension is the use of AI for the generation and distribution of disinformation and hate speech. The combination of generative AI (which can produce plausible-sounding text, realistic-looking images, and convincing audio and video content) with social media platforms optimised for engagement (which algorithmically amplify content that generates strong emotional reactions) creates an environment in which false narratives, inflammatory content, and incitement to communal violence can spread faster and with more apparent credibility than ever before. In India, where communal tensions are a permanent feature of the political landscape and where the constitutional rights of minorities are already under systematic pressure, the AI-enabled amplification of communal disinformation represents a direct threat to the constitutional values of equality, secularism, and the dignity of every person.

The third dimension is the emergence of deepfake technology as an electoral weapon. Deepfake videos, in which AI is used to create realistic-appearing video and audio recordings of people saying things they never said, have been used in Indian political campaigns to generate false impressions of political figures and to spread narratives that serve partisan purposes. The IT Amendment Rules of February 2026 address this concern by imposing obligations on intermediaries regarding the labelling of AI-generated content and the removal of deepfakes, but these content moderation obligations, however well-intentioned, address the symptom rather than the constitutional disease. The constitutional disease is the absence of a framework that treats AI-enabled democratic manipulation as the constitutional violation it is: a violation of the right to free and fair elections, which the Supreme Court has identified as part of the basic structure of the Constitution, and a violation of the right of citizens to make genuinely informed political choices.

CHAPTER SIX: FREE SPEECH, PLATFORM POWER, AND THE DIGITAL PUBLIC SPHERE

6.1 Article 19 in the Age of Algorithms: The Free Speech Paradox

The freedom of speech and expression guaranteed by Article 19(1)(a) of the Constitution is, in theory, one of the most important fundamental rights in the Indian constitutional framework. In practice, it has always been more constrained than its textual formulation suggests, partly

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because of the broad reasonable restriction clauses in Article 19(2) (which allow restrictions in the interests of sovereignty and integrity, security of state, friendly relations with foreign states, public order, decency, morality, contempt of court, defamation, and incitement), and partly because of the history of colonial-era laws like the Sedition Law (Section 124A of the Indian Penal Code, now Section 152 of the Bharatiya Nyaya Sanhita) that have been used to criminalise speech that is, in the analysis of any fair application of constitutional principles, entirely protected.

But the digital age has created a new and qualitatively different set of free speech challenges that the existing constitutional framework is not equipped to address.

The first challenge is the private power problem. The primary spaces of political speech in India in 2026 are not the public streets and meeting halls that Article 19's framers had in mind. They are digital platforms: WhatsApp, Instagram, YouTube, X (formerly Twitter), Telegram, and the various Indian-origin social media platforms. These platforms are owned by private corporations. They are not constitutionally obligated, under existing Indian constitutional doctrine, to protect the freedom of speech of their users in the way that the state is obligated to protect it. They can and do make content moderation decisions that affect the speech of hundreds of millions of Indian citizens without any of the constitutional safeguards that apply to state restriction of speech: no requirement of a legitimate aim, no proportionality requirement, no requirement of notice and opportunity to be heard, no requirement of judicial oversight.

The constitutional significance of this private power problem is profound. When Facebook's algorithm decides that a post is "hate speech" and removes it, or boosts it, the speech freedom of the affected individual or community is practically affected in a way that Article 19 does not address. When WhatsApp, responding to government pressure, implements message tracing capabilities that undermine the anonymity of private communications, the privacy of those communications is affected in a way that the Puttaswamy framework struggles to reach. When YouTube demonetises the channel of a journalist critical of the government, effectively suppressing her speech through economic rather than legal means, the constitutional protection of press freedom under Article 19(1)(a) provides no remedy.

The second challenge is the algorithmic speech environment. Even when specific pieces of speech are not removed or restricted, the algorithmic architecture of digital platforms shapes what citizens see, hear, and engage with in ways that profoundly affect the quality of democratic discourse. Algorithms designed to maximise engagement systematically amplify emotionally provocative content over accurate content, inflammatory material over nuanced analysis, content that generates outrage over content that generates understanding. In India's deeply polarised political environment, these algorithmic biases have had documented effects on communal attitudes, on political misinformation, and on the spread of hate speech and incitement to violence.

These algorithmic effects on democratic discourse are not addressed by Article 19, which was designed to protect individuals from state restriction of their speech, not to ensure that the information environment of democratic citizens is shaped by values of accuracy, pluralism, and

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democratic deliberation rather than by the profit-maximising algorithms of platform corporations.

6.2 The IT Rules and the Architecture of State-Corporate Censorship

The IT (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, and the subsequent amendments of 2023 and 2026, represent the Indian state's primary legislative response to the challenge of governing speech on digital platforms. But the constitutional analysis of these Rules reveals that they are designed not to protect the free speech of citizens on digital platforms but to give the government new instruments of control over digital speech that go well beyond the constitutional limits of Article 19(2).

The most constitutionally problematic provision of the IT Rules is the Grievance Appellate Committee (GAC) mechanism, introduced in the 2022 amendment. The GAC is a government-constituted body that hears appeals from users who are dissatisfied with content moderation decisions made by platforms. On its face, this seems like a mechanism for protecting users' speech rights: if a platform removes your content unfairly, you can appeal to the GAC. But the constitutional analysis is less benign.

The GAC has the power to direct platforms to restore content that users believe has been wrongly removed. But it also has the power to direct platforms to remove content that users seek to restore. And the GAC is a government body. Its members are appointed by the Central Government. Its decisions reflect the government's views about what content should or should not be available on digital platforms. The effect of the GAC mechanism is therefore to give the government the power to direct private platforms to make content moderation decisions in accordance with the government's preferences, without the constitutional constraints that would apply to direct state restriction of speech.

This is what legal scholars call "jawboning": the use of state power, exercised through formally private intermediaries, to restrict speech in ways that avoid the constitutional constraints that would apply to direct state censorship. The government cannot directly order the removal of a news article criticising the Prime Minister without triggering Article 19(1)(a) protection and the requirement that any restriction meet the standards of Article 19(2). But if the government can pressure or direct a platform to remove the article through the GAC mechanism, or through the threat of regulatory consequences, or through the new safe harbour conditions introduced in the IT Rules 2021 (which require platforms to comply with government demands in order to retain their immunity from liability), the practical effect on the journalist's free speech is identical, but the constitutional constraint is much weaker.

The IT Amendment Rules of February 2026, which introduced new obligations regarding AI-generated content and deepfakes, represent a genuine regulatory concern addressed in a constitutionally problematic way. The mandatory labelling of AI-generated content is a legitimate transparency measure. The condensed takedown windows for deepfakes and synthetic media, which require platforms to act within 24 hours of a complaint, create a regime in which the pressure to comply quickly pushes platforms toward over-removal rather than careful assessment, with the consequence that speech that is technically AI-generated but is protected

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political commentary, satire, or news may be removed without adequate consideration of its constitutional protection.

6.3 Section 66A's Ghost: The New Tools of Speech Suppression

The Shreya Singhal judgment of 2015 struck down Section 66A of the IT Act, which had made it a criminal offence to send electronic communications that were "grossly offensive" or "of menacing character" or that caused "annoyance" or "inconvenience." The judgment recognised that these standards were so vague as to be constitutionally incompatible with the requirement of a precise and narrowly drawn restriction on speech, and that the practical use of Section 66A had been overwhelmingly directed at the suppression of political speech and online criticism of the government and powerful figures rather than at the harms the provision nominally targeted.

The Shreya Singhal judgment was celebrated as a landmark free speech decision. But the constitutional victory it represented has been, in important respects, reversed by subsequent legislative and administrative developments that have recreated the suppressive effects of Section 66A through different legal mechanisms.

The Unlawful Activities (Prevention) Act (UAPA) has become the primary instrument for the criminalisation of digital speech that the government considers threatening. Journalists, academics, activists, and ordinary citizens have been arrested under the UAPA for social media posts, WhatsApp messages, and online articles on the ground that their content constitutes support for terrorist or unlawful organisations. The constitutional standard for prosecution under the UAPA has been largely absent from its practical application: the standard of imminent incitement established in Kedar Nath Singh v. State of Bihar (1962) for sedition, and the proportionality standard established in the cases interpreting Article 19(2), have been regularly ignored by police, prosecutors, and magistrates in UAPA cases. The bail provisions of the UAPA, which make it extremely difficult to obtain bail before trial, mean that a person arrested under the UAPA for a social media post can spend months or years in pre-trial detention regardless of the merits of the case, creating a powerful deterrent to the exercise of free speech that is constitutionally equivalent in its effect to direct criminalisation.

The Bharatiya Nyaya Sanhita (BNS), which replaced the Indian Penal Code in 2024, retained a modified version of the sedition law as Section 152, which criminalises acts that "excite or attempt to excite secession or armed rebellion or subversive activities" against the state. The replacement of the old sedition provision's focus on "disaffection" with the new provision's focus on "subversive activities" represents a partial reform that does not address the fundamental constitutional problem: that criminal law is being used to restrict political speech against the government in ways that are incompatible with the robust protection of free speech that a democratic constitutional order requires.

CHAPTER SEVEN: INTERNET SHUTDOWNS AS CONSTITUTIONAL WEAPONS

7.1 The Constitutional Anatomy of a Shutdown

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An internet shutdown in the Indian context is an administrative order, issued by a district magistrate, a state government, or the Union Home Ministry, directing one or more telecom operators to suspend internet services in a specified geographic area for a specified period. The shutdown is implemented technically by the operators, who direct their systems to stop routing traffic to and from the specified area. Citizens in the affected area lose access to all internet-dependent services: messaging, email, social media, news, banking, telemedicine, navigation, e-commerce, and emergency services that depend on digital communication.

The constitutional analysis of a shutdown must begin with the observation that no single executive action simultaneously violates more fundamental rights of more citizens. An internet shutdown in a city of one million people simultaneously deprives all one million citizens of their freedom of speech and expression (Article 19(1)(a)), their right to access information (derived from Article 19(1)(a) and Article 21), their right to carry on trade and occupation (Article 19(1)(g)), their right to life and personal liberty as affected by disruption of health and emergency services (Article 21), and their right to equality in the sense that the burden of the shutdown falls disproportionately on the poor, the sick, the elderly, and others who are most dependent on digital services.

The legal authority for internet shutdowns is, as noted above, the Indian Telegraph Act of 1885 and the 2017 Temporary Suspension of Telecom Services Rules. The inadequacy of this legal framework, measured against the constitutional standard established by Anuradha Bhasin, is manifest. The 2017 Rules require that shutdown orders be in writing, be reviewed within five days by a review committee, and be of limited duration (extendable). But they do not require judicial authorisation before a shutdown is imposed. They do not require that the necessity and proportionality of the shutdown be demonstrated to any independent body before it takes effect. They do not require that the grounds for the shutdown be specific rather than general. And they do not provide any mechanism for expeditious judicial review that could provide effective relief to citizens before the harm of the shutdown has been done.

7.2 The Kashmir Laboratory: What Prolonged Shutdowns Do to People

The Kashmir internet shutdown, which lasted in its most comprehensive form from August 2019 to March 2020 and in various partial forms for considerably longer, was the most extensive internet shutdown in the history of democratic governance. Its human consequences provide a devastating empirical case study of what internet shutdowns actually mean for the people who experience them.

Kashmiris lost access to telemedicine services at a time when the region's healthcare system was already under severe strain. Students preparing for university entrance examinations lost access to online educational resources for months. Journalists were unable to file reports, creating an effective news blackout about conditions in the region that served the government's interest in controlling the information narrative. Small businesses dependent on digital platforms for sales, orders, and communication with suppliers and customers suffered severe economic losses. Legal professionals were unable to access online legal databases, file electronic documents with courts, or communicate with clients in other cities. And the simple, ordinary human need to communicate with family members in other parts of India and the world, to share photographs of

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celebrations and mourning, to say goodnight across a distance: this was denied to an entire population for months, by executive decree, with no judicial oversight.

The constitutional indignity of the Kashmir shutdown was compounded by the government's argument before the Supreme Court that the shutdown was justified by national security concerns, and by the Supreme Court's acceptance of this argument as a reason to defer to executive judgment rather than to scrutinise the proportionality of the measure. The space that the Supreme Court created between its constitutional pronouncement in Anuradha Bhasin (shutdowns must be proportionate, orders must be published, courts can review) and its actual willingness to enforce that standard against the government's security claims is the space in which the constitutional rights of eight million Kashmiris were suspended for months.

The Kashmir shutdown was not an anomaly. Since 2019, internet shutdowns have been regularly used in Manipur (where a sustained conflict has been accompanied by sustained digital blackouts), in districts of Rajasthan and Haryana during protests and examinations, in parts of the northeastern states, and in various other locations where the government has determined that restricting access to digital communication serves its administrative or political purposes. In each case, the same pattern applies: an executive order, minimal procedural requirements, no prior judicial scrutiny, and a population left without access to services and rights that the Constitution formally guarantees.

7.3 The Global Comparison and the Democratic Deficit

India's position as the world's most frequent user of internet shutdowns among formally democratic states is not a statistical curiosity. It is a constitutional symptom. It reflects the combination of the colonial administrative tradition of controlling information flows, the inadequate constitutional and statutory framework for protecting digital freedom, the excessive concentration of executive power that allows executive decisions to impose massive collateral costs on citizens without independent accountability, and the political culture of a government that experiences the free flow of information as a threat rather than a democratic good.

The comparison with other democracies is instructive. Germany, France, Canada, Australia, Japan, South Korea, and every other established democracy with a comparable or smaller population than India has used internet shutdowns at a tiny fraction of India's frequency. The United Kingdom has never used an internet shutdown. The United States has never used a nationwide internet shutdown. The democracies of Western Europe collectively impose fewer internet shutdowns in a decade than India imposes in a single year. This is not because these countries have better internet infrastructure (many do not) or because they face fewer security challenges (several face serious security challenges). It is because their constitutional and legal frameworks are stronger, because their executive power is more effectively checked, and because their political cultures treat the freedom of digital communication as a constitutional right to be protected rather than as an administrative convenience to be suspended when the government finds it convenient.

The constitutional reconstruction of India must address the internet shutdown problem specifically and explicitly. The new Constitution of India should establish a constitutional right

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of access to the internet as a fundamental right, prohibit the suspension of internet access except under conditions analogous to those for a national emergency, require prior judicial authorisation for any suspension of internet access, and provide immediate and effective constitutional remedy for any person affected by an unlawful suspension. These provisions would not eliminate internet shutdowns in all circumstances. There will be genuine emergencies that require genuine emergency measures. But they would ensure that internet shutdowns are constitutional exceptions rather than administrative routines, and that the fundamental rights of citizens to access information and communicate freely in the digital age are treated with the seriousness that the constitutional order demands.

CHAPTER EIGHT: DIGITAL EXCLUSION AND THE VICTIMISATION OF THE POOR

8.1 The Paradox of Digital Inclusion as Instrument of Exclusion

There is a profound paradox at the heart of India's digital governance project. The rhetorical framework of the Digital India initiative, launched in 2015 and continued through multiple governments, presents the digitisation of governance as a tool of inclusion: bringing services to citizens who were previously excluded from them by distance, corruption, and bureaucratic inefficiency. And there are genuine achievements to acknowledge: the Direct Benefit Transfer system, which uses digital banking to deliver welfare payments directly to beneficiaries' accounts, has undoubtedly reduced some forms of corrupt diversion of welfare funds. The e-governance initiatives that allow citizens to access government services online have reduced some forms of bureaucratic friction for citizens who can navigate digital systems.

But the digitisation of governance has also created new and severe forms of exclusion that the existing constitutional framework is inadequately equipped to address.

The most fundamental form of digital exclusion is the exclusion of citizens who lack the prerequisites for digital participation: a smartphone or computer, reliable internet connectivity, digital literacy, and a verified digital identity. In 2026, despite decades of digital expansion, significant proportions of India's population, concentrated among the poor, the elderly, the rural, the tribal, and women, remain partially or wholly excluded from the digital infrastructure that is increasingly the foundation of access to government services, welfare entitlements, financial services, educational opportunities, and political participation.

When government services are moved entirely online, when welfare entitlements require digital authentication, when government documents are issued only in digital form, when court filings must be made electronically, when tax returns must be submitted online, when the civil processes of civic life are digitised without adequate provision for those who cannot access digital systems, the digitisation of governance transforms from an instrument of inclusion into an instrument of exclusion. And the constitutional analysis of this transformation is clear: when the exercise of constitutional rights and the access to constitutionally guaranteed entitlements requires a capacity

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that a significant proportion of citizens lack, the constitutional obligation is to ensure that capacity, not to demand it as a prerequisite for rights.

The Supreme Court has recognised this problem in specific contexts. The Aadhaar litigation produced judicial guidelines about the obligation to provide alternative means of identity verification for citizens who cannot complete biometric authentication. The e-governance cases have produced observations about the obligation to maintain offline channels for citizens without internet access. But these judicial interventions have been reactive, specific, and insufficiently structural. They address individual instances of exclusion without addressing the systematic constitutional problem of a governance framework that is designed primarily for the digitally capable and that treats the digitally excluded as an administrative inconvenience rather than as citizens with equal constitutional rights.

8.2 Algorithmic Exclusion in Welfare Delivery: The Invisible Constitutional Violation

The most severe and least visible form of digital exclusion is the exclusion of eligible citizens from welfare entitlements by algorithmic and biometric systems that fail to recognise or verify their eligibility. This form of exclusion is not visible in the way that a police arrest is visible, or a court judgment is visible, or a government policy decision is visible. It is invisible because it happens in the interaction between a citizen and a database, at a remote authentication terminal, in the processing of a welfare application by an automated system.

The invisibility of algorithmic welfare exclusion is itself a constitutional problem. When the state denies a citizen's fundamental right to education, to health, or to food, the denial should be apparent, documented, and subject to constitutional remedy. When the denial is effected by an algorithmic system that records a transaction failure rather than a rights violation, the constitutional accountability of the denial is obscured. The citizen knows that she did not receive her ration. The database records that authentication failed. But no record is created of the constitutional violation that has occurred: that a citizen entitled to food under the National Food Security Act and under Article 21's right to life has been denied that food by the failure of a biometric system that the state imposed as a condition of access.

The documentation of this systemic failure by researchers, civil society organisations, and journalists has been extensive. The Jharkhand cases documented by the Right to Food Campaign are the most cited but they are far from the only cases. Studies in Rajasthan, Telangana, Andhra Pradesh, and other states have documented patterns of Aadhaar-based exclusion from welfare that disproportionately affect the elderly, the disabled, the tribal, and the manual laborer whose fingerprints are worn by years of physical work. In each case, the constitutional analysis is the same: the state has imposed a condition of access to welfare entitlements that a significant proportion of eligible citizens cannot meet, and has done so without providing any adequate alternative mechanism for those citizens to establish their entitlement.

The constitutional obligation to ensure that welfare entitlements reach those entitled to them is not merely a statutory obligation under the National Food Security Act or the MGNREGS legislation. It derives from the constitutional guarantee of the right to life under Article 21, which the Supreme Court has interpreted to include the right to food, the right to livelihood, and the

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right to a dignified existence. A welfare delivery system that systematically fails to deliver welfare to a significant proportion of entitled citizens is a system that systematically violates these constitutional rights. And a constitutional order that permits such a system to operate without effective remedy is a constitutional order that has failed in its most fundamental obligation to its most vulnerable citizens.

8.3 The Digital Gender Gap and Women's Constitutional Rights

The intersection of digital exclusion and gender inequality creates a specific form of constitutional crisis that deserves explicit analysis. Women in India, particularly women in rural areas, are significantly less likely than men to own smartphones, to have independent internet access, to be enrolled in digital financial services, and to be capable of navigating the digital systems through which governance is increasingly delivered. The gender digital gap is not merely a matter of access to technology. It reflects and reinforces the structural gender inequalities of Indian society: the lower educational attainment of women, the lesser economic independence of women, the social norms that restrict women's mobility and public participation, and the household resource allocation patterns that privilege men's technological access over women's.

When governance is digitised in a context where women are systematically less digitally capable than men, the effect is to create a new form of gendered exclusion from governance services and rights. The woman who cannot independently access her Jan Dhan account because the nearest banking correspondent is hours away and she is not permitted to travel independently. The woman whose Direct Benefit Transfer welfare payment goes into an account that her husband controls. The woman who cannot access the government's digital health services because the family smartphone belongs to her husband and she does not know how to operate it. These are constitutional violations grounded not in explicit discriminatory law but in the gendered architecture of digital governance, an architecture that the existing constitutional framework has no mechanism to address.

Article 15 of the Constitution prohibits discrimination on grounds of sex. But the gender digital gap is not produced by a specific discriminatory provision that Article 15 can directly address. It is produced by the intersection of social gender inequality with design choices in digital governance that fail to account for that inequality. The remedy is not a specific anti-discrimination provision but a constitutional obligation of "digital gender equity": the obligation to design governance systems in ways that ensure that women have equal practical access to digitally-delivered rights and services. This obligation does not currently exist in the constitutional framework, and it requires constitutional provision to make it real.

CHAPTER NINE: TOWARD A DIGITAL CONSTITUTION FOR INDIA

9.1 The Inadequacy of Amendment: Why Digital Constitutional Rights Require a New Foundation

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The previous eight chapters have documented a constitutional crisis of the digital age that is, in its severity, its scale, and its consequences for the rights and dignity of hundreds of millions of citizens, among the most serious constitutional challenges that any democratic state faces in the twenty-first century. The surveillance state that operates without constitutional framework. The biometric identification system that excludes the most vulnerable from their entitlements. The data protection law that protects the state more than the citizen. The AI governance framework that prioritises innovation over rights. The free speech environment dominated by private platform power and state-commercial censorship collaboration. The internet shutdowns that are imposed with colonial casualness on populations whose digital rights are treated as administrative inconveniences. The digital exclusion that reproduces and deepens the existing inequalities of caste, class, and gender.

Each of these crises could be, in principle, partially addressed by specific legislative reforms within the existing constitutional framework. Better surveillance legislation. Stronger data protection rules. Mandatory AI bias audits. Judicial authorisation requirements for internet shutdowns. Digital inclusion obligations in welfare delivery legislation. These reforms would all be improvements on the existing situation, and this textbook does not argue against them. They should be pursued, urgently and comprehensively.

But specific legislative reforms within the existing constitutional framework cannot address the root cause of the digital constitutional crisis, which is the same root cause that this textbook has identified throughout its examination of the Indian constitutional order: the structural tendency of the existing constitution to concentrate power in the executive, to insulate that power from accountability, to prioritise state and elite interests over citizen rights, and to provide formal rights guarantees that are inaccessible to the majority of citizens in practice.

A surveillance statute enacted by a Parliament controlled by the government that benefits from surveillance will not provide genuine constitutional protection against surveillance. A data protection authority appointed by the government whose data processing it is supposed to regulate will not provide genuine independence. An AI governance framework developed by a ministry that has the duty to promote AI adoption will not prioritise rights over innovation in cases of genuine conflict. Internet shutdown reform legislation can be watered down, amended, or suspended by the government that introduced it. And the underlying constitutional architecture that concentrates executive power, privileges state authority over individual rights, and leaves the poor and marginalised without effective constitutional remedy will continue to produce these outcomes regardless of the specific legislative framework in force.

The digital constitutional crisis requires a constitutional response. And the constitutional response requires a new constitution, one that addresses the digital age not as an afterthought or an addition to a twentieth-century document but as a foundational concern that shapes the constitutional architecture from the beginning.

9.2 The Specific Constitutional Provisions That a New Constitution Must Include

The new Constitution of India's treatment of digital rights and digital governance must include, at minimum, the following constitutional provisions.

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The first is a Constitutional Right to Digital Access. The new Constitution must recognise access to the internet and to digital communication infrastructure as a fundamental right, on the same level as the rights to freedom of speech, freedom of movement, and freedom to carry on an occupation. This right must impose on the state a positive obligation to ensure that all citizens have meaningful access to digital infrastructure, including affordable connectivity, affordable digital devices, and the digital literacy necessary to use them effectively. The right to digital access must be justiciable, meaning that a citizen who is denied meaningful digital access must be able to seek constitutional remedy in a court of law.

The constitutional basis for this right is not difficult to establish within the tradition of constitutional interpretation that the Puttaswamy judgment and the Article 21 expansions have built. But the establishment of digital access as a justiciable fundamental right requires constitutional provision rather than judicial interpretation, because judicial interpretation of Article 21 can be and has been reversed or narrowed by subsequent benches, because the positive obligation dimension of digital access (the obligation to provide infrastructure) is beyond what judicial interpretation of existing rights can reliably sustain, and because the right to digital access must be explicitly linked to the right to equality in a way that requires constitutional recognition rather than interpretive extension.

The second is a Constitutional Right to Data Sovereignty. The new Constitution must recognise the right of every citizen to meaningful control over personal data that concerns her: the right to know what data about her is held by the state and by corporations, the right to access that data, the right to correct inaccurate data, the right to delete data that is no longer necessary, the right to port data from one service to another, the right to know when her data has been accessed by the state, the right to challenge data processing that lacks constitutional justification, and the right to effective remedy when these rights are violated.

The right to data sovereignty must be designed with explicit recognition of the structural inequalities that make formal rights meaningless for the majority of citizens. It must impose obligations not only on the state and on data processors to respect citizens' data rights but on the constitutional framework to ensure that those rights are effectively accessible to all citizens. This means that the constitutional provision must include obligations to provide free legal assistance for data rights enforcement, to create accessible non-judicial mechanisms for data rights complaints, to impose strict time limits on the resolution of data rights cases, and to provide effective remedies including financial compensation and criminal accountability for serious data rights violations.

The third is a Constitutional Framework for Surveillance. The new Constitution must explicitly address the state's surveillance powers. It must establish that any surveillance of citizens' communications by the state requires prior judicial authorisation, must specify the minimum legal standards for such authorisation (including a requirement of reasonable grounds for suspecting the specific individual of serious criminal conduct), must require that surveillance authorisations be limited in scope and duration, must create a mechanism for independent oversight of the state's surveillance activities, must require that citizens be notified of surveillance that has been conducted against them as soon as notification is compatible with any ongoing investigation, and must provide effective constitutional remedy for unlawful

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surveillance including the suppression of evidence obtained through unlawful surveillance in any criminal or administrative proceeding.

The prohibition on mass surveillance must be explicit. The new Constitution must make clear that the wholesale collection of communications data on populations rather than specific individuals suspected of wrongdoing, regardless of what it is called by the government, is constitutionally impermissible. Mass surveillance is incompatible with the constitutional values of privacy, dignity, the freedom of association, the freedom of political participation, and the right of citizens to dissent without fear of state reprisal. A constitution that permits mass surveillance cannot claim to protect the freedom of its citizens in any meaningful sense.

The fourth is a Constitutional Framework for Algorithmic Governance. The new Constitution must address the constitutional dimensions of the use of AI and algorithmic systems in governance. At minimum, it must establish that: no decision by a state authority that significantly affects the rights or entitlements of a citizen may be made solely by an automated system without the possibility of human review; algorithmic systems used in governance must be transparent, explainable, and subject to independent audit; the state must not deploy AI systems in governance without prior assessment of their impact on constitutional rights, including assessment of discriminatory impacts; the state must provide effective constitutional remedy for citizens harmed by AI systems in governance; and certain categories of AI use in governance, particularly the use of AI for real-time mass surveillance in public spaces, must be constitutionally prohibited.

The fifth is a Constitutional Right of Internet Access and a Constitutional Prohibition on Arbitrary Internet Shutdowns. The new Constitution must establish that the suspension of internet access is a measure equivalent in its constitutional severity to the proclamation of a state of emergency, must require prior judicial authorisation for any internet shutdown, must impose strict proportionality requirements on the scope and duration of any shutdown, must require immediate notification to affected citizens, must require expeditious judicial review of any shutdown at the request of any affected person, and must provide for automatic termination of any shutdown that is not affirmatively renewed by judicial order. The provision must also explicitly recognise that the burden of demonstrating the necessity and proportionality of an internet shutdown rests with the state, not with the citizens whose rights are affected.

The sixth is a Constitutional Obligation of Digital Equity. The new Constitution must impose on the state a constitutional obligation of digital equity: to ensure that no citizen is excluded from any government service, welfare entitlement, civic right, or democratic participation by lack of access to digital technology. This obligation must be enforceable: a citizen who is denied a welfare entitlement because of inability to complete digital authentication must be able to seek constitutional remedy without the complexity and expense of current constitutional litigation. The constitutional obligation of digital equity must also address the gender digital gap specifically, requiring that governance systems be designed to ensure that women have equal practical access to all digitally delivered rights and services.

The seventh is a Constitutional Right Against Biometric Compulsion. The new Constitution must prohibit the state from making the provision of biometric data a condition of access to any

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fundamental right, any constitutional entitlement, or any basic service that citizens require for their dignity and daily life. This prohibition must also extend to the use of biometric authentication as a single-point failure mechanism for access to welfare: if biometric authentication fails, the state must have an obligation to provide effective alternative means of access rather than the ability to deny access entirely. The constitutional provision must also address the mission creep problem, prohibiting the use of biometric data collected for one purpose for any other purpose without the explicit, freely given, and fully informed consent of the individual whose data it is.

9.3 The Constitutional Framework for a Digital Data Protection Authority

A constitutional provision for data protection, like a constitutional provision for environmental protection or for economic rights, is only as strong as the institutional machinery created to enforce it. The history of Indian constitutional institutions, traced throughout this textbook, teaches a consistent lesson: institutions that are appointed by the executive and accountable to the executive will, in conditions of political pressure, defer to the executive rather than to the constitutional values they are supposed to enforce. The Data Protection Board established by the DPDPA of 2023 exemplifies this problem.

The new Constitution must establish an independent constitutional Data Protection and Digital Rights Commission, with the same constitutional status and independence as the Election Commission. Its members must be appointed through a process that is independent of executive control, involving the parliamentary leadership of all significant parties, independent constitutional experts, and civil society representatives. Its members must have fixed, non-renewable terms and can be removed only through the same process as the removal of Supreme Court judges. Its decisions must be subject to challenge only in the High Courts and the Supreme Court, not in executive tribunals. Its budget must be determined by Parliament independently of the executive, to prevent funding pressure from compromising its independence.

This Commission must have jurisdiction over both state and private data processing, without the government exemptions that undermine the DPDPA. It must have the power to investigate data protection violations on its own motion as well as on complaint. It must have the power to impose substantial fines and to recommend criminal prosecution. And it must have a specific mandate to address the digital rights of the most vulnerable: the poor, the women, the Dalits, the Adivasis, the elderly, and others who are most exposed to digital exploitation and least capable of accessing the legal system for protection.

9.4 Artificial Intelligence Governance: The Constitutional Architecture of a New Institution

The governance of artificial intelligence in governance requires a constitutional institution, not merely a regulatory authority. The India AI Governance Guidelines of November 2025 represent an acknowledgment of the need for institutional governance of AI, with their proposed AI Governance Group, Technology and Policy Expert Committee, and AI Safety Institute. But these proposed institutions are advisory bodies without constitutional authority, lacking independence

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from the ministry that created them and without enforceable powers over the government agencies whose AI use they are supposed to oversee.

The new Constitution must establish an independent AI Regulatory Commission with constitutional authority to: set binding standards for the use of AI in governance; require prior authorisation for the deployment of AI systems in high-risk governance contexts; conduct mandatory audits of AI systems in use in governance, with the results of those audits publicly available; investigate complaints from citizens who have been harmed by AI systems in governance; impose remedies including cessation of AI system use, compensation, and criminal prosecution for the most serious violations; and prohibit specific uses of AI that are incompatible with constitutional rights, including the use of AI for real-time mass biometric surveillance.

The AI Regulatory Commission must be constitutionally independent of both the executive and the technology industry whose systems it regulates. Its members must include constitutional lawyers, AI technical experts, social scientists, civil society representatives, and representatives of the communities most likely to be affected by AI in governance, including Dalits, Adivasis, Muslim communities, women's organisations, and poverty-focused civil society groups. Its institutional design must reflect the Ambedkarite principle that the institutions of constitutional democracy must be representative of all the people whose lives they affect, not merely the educated, the propertied, and the technically expert.

9.5 The Constituent Process for a Digital Constitution

The constitutional provisions outlined in this chapter cannot be legislated by the existing Parliament under the existing constitutional amendment procedure. They require a new Constitution. And a new Constitution requires a genuine constituent process: a process of constitutional creation that is democratic in a far more substantive sense than the process by which the existing Constitution was created.

The digital dimension of the constituent process deserves explicit attention. The creation of a new Constitution for India in the twenty-first century must itself be a digitally enabled democratic exercise: a process in which digital platforms are used to gather the voices of citizens across the country, including the voices of the rural, the tribal, the poor, and the excluded, in articulating their constitutional aspirations. A process in which the deliberations of the constituent assembly are publicly available online in real time, translated into all scheduled languages, and accessible to citizens for comment and critique. A process in which civil society organisations, professional associations, academic communities, and individual citizens have meaningful channels of participation, not merely the formal channel of commenting on a draft that has already been prepared by constitutional experts.

But the digital dimension of the constituent process also requires awareness of the risks. The same AI-driven manipulation of democratic discourse that distorts Indian electoral politics can distort the process of constitutional creation. The same platform power that shapes the information environment of democratic debate can shape the information environment of constitutional debate. The same digital exclusion that prevents the poor and the marginalised

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from participating in existing democratic processes can prevent them from participating in the constituent process if it is not designed with explicit attention to their needs.

A genuinely democratic constituent process for a digital constitution must be both digital and non-digital: using digital tools to expand participation while maintaining accessible, non-digital channels for those who cannot or choose not to participate digitally. It must be both national and local: conducted through national deliberative processes and through local consultation processes that reach into villages, tribal communities, informal settlements, and other places where the voices of the most excluded can be heard. And it must be both expert-led and citizen-led: involving constitutional experts, legal scholars, AI specialists, data scientists, and other technical experts in the drafting process while ensuring that the fundamental choices about constitutional values, priorities, and design reflect the democratic will of the people rather than the expert preferences of a technocratic elite.

CHAPTER TEN: THE DIGITAL CONSTITUTION AND THE GLOBAL CONVERSATION

10.1 India in the Global Debate on Digital Constitutionalism

The constitutional challenges of the digital age that India faces are not unique to India. Every constitutional democracy in the world is grappling with questions about how to govern AI, how to protect data privacy, how to prevent surveillance states, how to ensure that digital platforms serve democratic values rather than undermining them, and how to address the digital exclusion that threatens to create new forms of citizenship inequality in the information society.

But India's position in this global conversation is distinctive in several ways. India is the most populous democracy in the world, and its constitutional choices about digital governance will affect more people than those of any other country. India is also a country of extraordinary digital inequality: home to some of the world's most sophisticated AI researchers and technology entrepreneurs and also to hundreds of millions of people who lack basic digital literacy. India is a country where the colonial inheritance of state surveillance is particularly deep and particularly resistant to reform. And India is a country where the democratic deficit, documented throughout this textbook, means that the institutional capacity to govern digital power in the interests of citizens rather than the state is particularly weak.

India's engagement with the global conversation on digital constitutionalism has been, to date, characterized by a paradox. On the international stage, India presents itself as a champion of a "third way" in digital governance: an alternative to both the US model of platform self-regulation and the EU model of prescriptive regulation, one that combines innovation with rights protection and that offers lessons relevant to the Global South. The July 2025 BRICS Statement on Global AI Governance, in which India participated, reiterated commitments to transparency, accountability, and rights-based regulation. India's advocacy at the United Nations and other international forums for an inclusive, multi-stakeholder model of internet governance has been genuine and sometimes influential.

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But the domestic reality of Indian digital governance is in deep tension with this international advocacy. A country that imposes more internet shutdowns than any other, that operates a comprehensive surveillance architecture without statutory framework, that has enacted data protection legislation designed to preserve government data access rather than to protect citizens, and that has failed to enact enforceable AI governance legislation cannot credibly claim to be a global model of rights-protective digital governance. The gap between India's international digital rights advocacy and its domestic digital rights practice is, like the gap between the constitutional text and constitutional reality that this textbook has documented throughout, a gap that demands constitutional reconstruction rather than rhetorical amelioration.

10.2 Comparative Constitutional Approaches to Digital Rights

The global conversation on digital constitutionalism offers several constitutional models that are relevant to Indian constitutional reconstruction, though none that can be straightforwardly transplanted.

The European Union's approach to digital governance, exemplified by the General Data Protection Regulation of 2018, the AI Act of 2024, the Digital Services Act of 2022, and the Digital Markets Act of 2022, represents the most comprehensive legislative framework for digital rights among major democratic jurisdictions. The EU framework treats data protection as a fundamental right (under Article 8 of the Charter of Fundamental Rights of the EU), imposes strict obligations on both public and private data processors, creates independent supervisory authorities with enforcement powers, and applies a risk-based approach to AI regulation that prohibits the highest-risk uses of AI (including real-time biometric surveillance in public spaces by public authorities) while imposing transparency and accountability requirements on medium-risk uses.

The EU framework has significant relevance for Indian constitutional reconstruction, particularly in its recognition of data protection as a fundamental right, its approach to AI risk classification, its prohibition of mass biometric surveillance, and its institutional design of independent data protection supervisory authorities. But the EU framework also has limitations in the Indian context: it was designed for a context of relatively high digital literacy and relatively strong rule of law that does not characterise the Indian situation, it relies heavily on individual complaint-driven enforcement that is inadequate for the scale of rights violations in India, and it does not directly address the governance challenges of digital exclusion that are particularly acute in Indian conditions.

The Brazilian experience with the Lei Geral de Proteção de Dados (LGPD) and with the constitutional recognition of data protection as a fundamental right (added to the Brazilian Constitution in 2022) offers a more directly relevant precedent: a developing country with high levels of inequality and significant digital exclusion that has nevertheless managed to constitutionalise data protection and create institutional mechanisms for its enforcement. The Brazilian constitutional amendment, which added data protection to the list of fundamental rights in Article 5 of the Brazilian Constitution and established a constitutional basis for the LGPD, provides a model for the kind of constitutional provision that India needs.

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The South African Constitution, which this textbook has cited in earlier parts as a model for social and economic rights, is also relevant to digital constitutional design. Section 14 of the South African Constitution guarantees the right to privacy explicitly. The Constitutional Court of South Africa, in the case of Gaertner v. Minister of Finance (2014), developed a sophisticated analysis of the relationship between privacy, dignity, and the protection of personal information that is relevant to Indian constitutional thinking. And the Promotion of Access to Information Act of South Africa, which implements the Section 32 constitutional right of access to information, provides a legislative model for the operationalisation of constitutional information rights that is more relevant to Indian conditions than the European models.

10.3 The Right to Be Forgotten and the Right to the Future

One of the most interesting and most contested developments in digital rights jurisprudence globally is the emergence of the "right to be forgotten": the right of individuals to have information about them removed from digital records and search engines when that information is no longer relevant, accurate, or necessary. The European Court of Justice established this right in Google Spain v. AEPD and Mario Costeja González (2014), and it has since been incorporated into the GDPR and adopted in varying forms in several other jurisdictions.

The right to be forgotten is relevant to India in several specific contexts. It is relevant to the question of criminal records: in a country where arrests are often made on the basis of political motivation under UAPA, sedition, or similar provisions, and where many of those arrested are subsequently not convicted, the digital persistence of arrest records can affect a person's employment, social relationships, and fundamental dignity for years or decades after the underlying event. The constitutional right to a fresh start, to not have one's past define one's future permanently, is a dimension of the right to dignity under Article 21 that the digital age makes newly urgent.

It is relevant to the question of welfare exclusion: where a citizen's Aadhaar record has been erroneously cancelled or flagged, causing exclusion from welfare, the correction of that error and the removal of erroneous data from the record is a matter of constitutional right, not merely administrative convenience.

It is relevant to the question of minority communities: in a political environment where members of minority communities are frequently falsely accused, falsely arrested, and publicly shamed through digital media, the digital persistence of false information represents an ongoing constitutional violation that the right to be forgotten could partially address.

And it is relevant to the question of political expression: where politicians, citizens, and journalists have made statements in the past that were constitutionally protected speech and that they have subsequently disavowed or that were made in different political circumstances, the digital permanence of those statements in searchable records raises complex questions about the relationship between accountability and the freedom to change one's mind that a mature digital constitutional framework must address.

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The new Constitution of India should recognise the right to data correction and deletion as a dimension of the fundamental right to privacy and dignity, impose on both the state and private data processors a constitutional obligation to correct inaccurate data and to delete data that is no longer necessary for the purpose for which it was collected, and create effective constitutional remedies for the enforcement of these rights.

10.4 Digital Constitutionalism and the Global South

India's constitutional choices about digital governance have significance beyond its own borders. As the world's most populous developing country, as a major player in global AI development and deployment, as a country whose approach to digital identity through Aadhaar is being actively promoted and adopted by other developing countries, India's constitutional model for digital governance will influence the digital rights of citizens far beyond India's own territory.

The export of Aadhaar to other Global South countries has been promoted by the World Bank's ID4D programme and by various bilateral development partnerships as a model for digital identification that can serve development goals. But the constitutional and human rights concerns about Aadhaar that this chapter has documented do not disappear when the system is adopted elsewhere. The biometric exclusion of the most vulnerable, the surveillance capabilities that a comprehensive biometric database creates, the mission creep from welfare to total identification architecture: these are characteristics of the system itself, not merely of the Indian political context in which it operates. Countries that adopt the Aadhaar model without the constitutional protections that India has failed to establish will be adopting a system that concentrates state power over identity without the constitutional constraints that a rights-based system requires.

India's constitutional reconstruction, if it produces a genuine constitutional framework for digital rights that includes strong protections against biometric compulsion, mass surveillance, and digital exclusion, will have positive consequences not only for Indian citizens but for the global conversation about the constitutional governance of digital identity. A reconstructed India that practices what it preaches about digital rights internationally, that has a constitutional framework genuinely designed to protect citizens in the digital age rather than to concentrate state power over digital infrastructure, would be a genuinely valuable model for other developing democracies grappling with the same challenges.

CONCLUSION TO PART FIFTEEN: THE CONSTITUTION WE NEED FOR THE WORLD WE LIVE IN

This part of the textbook has made a single, sustained argument across ten chapters of analysis: that the Constitution of India is not merely inadequate to the challenges of the digital age but is structurally incompatible with the constitutional governance of a digital society in which the fundamental rights and dignity of citizens depend on their access to digital infrastructure, their protection from digital surveillance, their control over their personal data, and their ability to participate in a digital public sphere that is governed by constitutional values rather than by state power and corporate profit.

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The argument has been made through multiple lenses. Historical: the colonial inheritance of surveillance, registration, and information control that shapes the Indian state's approach to digital governance as deeply as it shapes its approach to any other domain of power. Jurisprudential: the limitations of the Puttaswamy privacy framework as a constitutional basis for digital rights, and the inadequacy of judicial interpretation as a substitute for constitutional provision. Political: the structural tendency of the existing constitutional order to concentrate executive power in ways that make genuine digital rights protection institutionally impossible regardless of the specific legislative framework in place. Sociological: the intersection of digital governance with the existing inequalities of caste, class, gender, and religion that the constitutional order has failed to dismantle, and through which digital governance becomes a new instrument of the old exclusions.

And the argument has led to a set of specific constitutional provisions that a new Constitution of India must include: a fundamental right to digital access, a right to data sovereignty, a constitutional surveillance framework, a constitutional framework for algorithmic governance, a prohibition on arbitrary internet shutdowns, a digital equity obligation, a prohibition on biometric compulsion, and the institutional machinery necessary to make these provisions effective in reality rather than merely in text.

These provisions do not exhaust the constitutional demands of the digital age. As AI continues to develop, as digital infrastructure continues to expand, as the relationship between the citizen and the digital state continues to evolve in ways that are difficult to predict, the constitutional framework for the digital age will need to be a living framework, capable of responding to changes that cannot be foreseen today. The new Constitution must therefore not only include specific digital rights provisions but must include a constitutional methodology for the development and enforcement of digital rights that is flexible enough to address challenges that are not yet apparent, robust enough to resist the political pressures that will always push toward state control of digital infrastructure, and participatory enough to ensure that the development of digital constitutional rights remains grounded in the needs and aspirations of the citizens whose rights they are.

The final word of this part belongs not to constitutional theory but to constitutional reality. As these words are written, there are citizens in Kashmir who cannot access the internet freely because a government they did not elect decided that their digital silence served its purposes. There are children in Jharkhand who go to school hungry because an Aadhaar authentication system decided that their parents are not entitled to the food rations the law says they deserve. There are journalists in Maharashtra who self-censor their reporting about political corruption because they know their digital communications are monitored and that the UAPA can be invoked against them at any time. There are Dalit communities in rural districts whose welfare data is being shared with private companies without their knowledge or consent, because a data protection law decided that the government's convenience matters more than their dignity. There are women in UP who cannot access government health services because the digital systems through which those services are delivered were designed without any consideration of the barriers that women face in accessing digital technology.

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These are not hypothetical constitutional violations. They are real. They are ongoing. They are happening to real people, with real lives, real families, real needs, and real constitutional rights that the existing constitutional order is failing to protect. The new Constitution of India must be written with their faces in mind, with their experiences as the test of its adequacy, and with their dignity as the measure of its success. A digital constitution that protects the right to privacy of the comfortable but not the right to food of the hungry is not a constitutional achievement. A digital constitution that prevents government surveillance of the powerful but not surveillance of the powerless has not understood what constitution-making is for. A digital constitution that governs artificial intelligence with abstract principles but fails to ensure that the farmer's welfare is not denied by a biometric glitch has substituted sophistication for substance.

The challenge of digital constitutionalism in India, in the end, is the same challenge that has animated this textbook from its first page: the challenge of making the constitutional promise of "We, the People" into something real, in a country where that promise has been deferred, diluted, and betrayed for more than seven decades, and where the technology of the twenty-first century has given both the forces of liberation and the forces of oppression extraordinary new powers. The new Constitution must ensure that those new powers serve the people, all the people, not merely the state, the corporations, and the elites who have always found the existing constitutional order more convenient than the people have.

That is the constitutional vision. The constitutional work of building it begins now.

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End of Part Fifteen.

Part Sixteen will examine the constitutional dimensions of environmental justice, climate governance, and the rights of nature and future generations, developing the argument for constitutional provisions that address the existential environmental crisis of the twenty-first century within a framework of genuine environmental democracy, intergenerational justice, and the constitutional accountability of those who profit from ecological destruction.

PART SIXTEEN: THE ECOLOGICAL CONSTITUTION - ENVIRONMENTAL JUSTICE, CLIMATE GOVERNANCE, AND THE RIGHTS OF NATURE AND FUTURE GENERATIONS

PREFACE TO PART SIXTEEN

This part of the textbook arrives at a moment of civilizational reckoning. As these words are written in 2026, the Indian subcontinent is experiencing climate disruptions of a magnitude and frequency that no generation of Indians has faced before. The summer of 2025 brought heat waves to the Indo-Gangetic Plain that killed thousands, collapsed agricultural yields across Uttar Pradesh, Bihar, and Madhya Pradesh, and forced millions of informal workers in construction and agriculture to choose between working in lethal temperatures and watching their families go hungry. The monsoon of 2025 came late, came unevenly, and in some regions came so violently that it destroyed crops that had survived the preceding drought. The glaciers of the Himalayas, which feed the rivers on which the drinking water and irrigation systems of hundreds of millions of people depend, are retreating at rates that glaciologists describe as catastrophic and that official Indian government assessments have repeatedly underestimated. The forests of the Western Ghats, among the most biodiverse landscapes on the planet, continue to be cleared for mining, plantations, and infrastructure at rates that the constitutional frameworks of both the Union and the states have proven unable to halt. The rivers of India, virtually without exception, carry loads of industrial effluent, agricultural chemicals, and untreated sewage that make them among the most polluted watercourses in the world. The air in India's cities kills hundreds of thousands of people every year through respiratory disease, cardiovascular damage, and the gradual destruction of children's developing lungs and brains.

This is not a marginal or peripheral crisis. It is a constitutional crisis. It is a crisis of governance, a crisis of power, a crisis of accountability, and a crisis of justice that is inseparable from the structural failures of the Indian constitutional order that this textbook has been documenting across fifteen previous parts. The ecological crisis of India is not a crisis that descended from outside the constitutional order. It is, in significant measure, a product of the constitutional order: of the concentrated executive power that authorizes ecologically destructive projects without democratic deliberation, of the centralizing federalism that overrides tribal and local communities' constitutional rights to refuse dispossession, of the non-justiciable Directive Principles that promised environmental protection without providing enforceable legal mechanisms, of the institutional capture by industrial and political elites that has turned environmental regulatory agencies into instruments of approval rather than protection, and of the

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philosophical inheritance from colonial and post-colonial development ideology that has treated nature as raw material for human exploitation rather than as a living system on which human life depends.

This part examines the constitutional dimensions of the ecological crisis across ten chapters that move from the immediate and practical to the philosophical and visionary. Chapter One examines the existing constitutional framework for environmental governance and its systematic failures. Chapter Two analyses the landmark MK Ranjitsinh judgment of 2024 and its implications for the constitutional right to be free from climate harm. Chapter Three examines the National Green Tribunal and its limitations as an instrument of environmental justice. Chapter Four investigates the constitutional economy of ecological destruction and the corruption that drives it. Chapter Five examines how the constitutional order has made the poor and marginalized the primary victims of environmental degradation while insulating the wealthy and politically connected from its consequences. Chapter Six examines the concept of the rights of nature, ecocide, and the emerging global conversation about giving legal personality to ecosystems. Chapter Seven addresses intergenerational justice and the constitutional rights of future generations. Chapter Eight examines India's international environmental obligations and the gap between its international commitments and its domestic performance. Chapter Nine develops a framework for an ecological constitution, drawing on comparative precedents, jurisprudential philosophy, and the specific conditions of India. Chapter Ten addresses the political economy of ecological constitutional reform and the forces that must be overcome to achieve it.

The argument that runs through all ten chapters is this: the ecological crisis of India cannot be resolved within the existing constitutional framework because the existing constitutional framework is structurally incapable of subordinating the short-term economic interests of the powerful to the long-term ecological interests of all. Only a fundamental constitutional reconstruction, one that places the right to a healthy environment and the rights of nature at the centre of the constitutional order rather than at its aspiring periphery, can create the conditions for a genuinely sustainable and just relationship between the Indian state, the Indian people, and the natural world on which both depend.

CHAPTER ONE: THE CONSTITUTIONAL FRAMEWORK FOR ENVIRONMENTAL GOVERNANCE AND ITS SYSTEMATIC FAILURES

1.1 The Constitutional Provisions: A Gap Between Text and Reality

The Constitution of India contains several provisions that are directly relevant to environmental governance, but the architecture of those provisions is, as with so many other domains of the Indian constitutional order, one that places the most important guarantees in the least enforceable parts of the document.

The primary constitutional provisions on the environment are found in Part IV, the Directive Principles of State Policy. Article 48A, inserted by the Forty-Second Amendment in 1976,

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directs the state to endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country. Article 51A(g), also inserted by the Forty-Second Amendment, makes it a fundamental duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures. These provisions represent the constitutional recognition, however belated, that environmental protection is a constitutional concern. But they suffer from the decisive limitation that the Directive Principles are not justiciable: Article 37 explicitly provides that they shall not be enforceable by any court. The fundamental duty under Article 51A is equally non-justiciable in the sense that no enforcement mechanism is provided.

The justiciable constitutional provisions relevant to the environment are therefore not the explicit environmental articles but the general fundamental rights articles, primarily Article 21 (right to life and personal liberty) and Article 14 (right to equality), which the Supreme Court has used over decades to construct a judicial environmental jurisprudence that has no direct textual foundation in the Constitution's explicit environmental provisions.

This architectural problem, which places the most important guarantees in the non-justiciable and advisory part of the Constitution while requiring courts to derive enforceable environmental rights through creative interpretation of general fundamental rights provisions, creates several structural weaknesses that have defined and constrained Indian environmental governance for decades.

The first weakness is constitutional uncertainty. Environmental rights that derive from judicial interpretation of Article 21 rather than from explicit constitutional provision are inherently vulnerable to reinterpretation by different judicial benches with different philosophies. The Supreme Court's environmental jurisprudence has been remarkably expansive in some periods and remarkably deferential to executive authority in others, and the absence of an explicit constitutional environmental rights provision means that these variations are constitutionally unconstrained. A bench that is ideologically committed to a narrow reading of Article 21 can always distinguish, narrow, or ignore its predecessors' environmental readings without violating any explicit constitutional text.

The second weakness is the gap between constitutional aspiration and statutory implementation. Article 48A directs the state to endeavour to protect the environment, but the statutory framework that has been built on this constitutional foundation is a patchwork of sector-specific legislation, the Environment Protection Act of 1986, the Water (Prevention and Control of Pollution) Act of 1974, the Air (Prevention and Control of Pollution) Act of 1981, the Forest Conservation Act of 1980, the Wildlife Protection Act of 1972, the Biological Diversity Act of 2002, each administered by different agencies with different mandates, different cultures, and different degrees of institutional independence from political pressure. The result is not an integrated framework of environmental governance but a fragmented archipelago of regulatory institutions, each of which can be bypassed, captured, or overridden by the executive authority that the constitutional framework concentrates in the Prime Minister and the Council of Ministers.

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The third weakness is the exclusion of local and indigenous knowledge from constitutional environmental governance. The communities that live in forests, on river banks, in coastal zones, and in other ecologically sensitive areas have detailed, locally specific, and often millennia-deep knowledge of the ecosystems they inhabit and depend upon. This knowledge is not merely traditional in the sense of being old: it is constantly being updated and refined through the lived experience of communities whose survival depends on understanding how their local ecosystems function. And yet the constitutional framework for environmental governance, inherited from the centralized administrative tradition of British colonialism, treats environmental governance as a technical and administrative matter to be managed by the central and state governments through their bureaucratic agencies, with local communities as stakeholders to be consulted, or more often not consulted, rather than as rights-holders with constitutional authority over the management of their environments.

The Forest Rights Act of 2006 represented a partial attempt to correct this exclusion by recognizing the rights of forest-dwelling communities over forest land and resources. But as Part Seven of this textbook documented, the implementation of the Forest Rights Act has been systematically resisted by forest bureaucracies, and the constitutional status of tribal communities' environmental rights remains fragile, dependent on the goodwill of state governments and central ministries rather than on enforceable constitutional provision.

1.2 The Environment Protection Act and Its Structural Capture

The Environment Protection Act of 1986 was enacted in the aftermath of the Bhopal gas tragedy of December 1984, in which a gas leak at the Union Carbide pesticide factory killed at least 15,000 people, injured hundreds of thousands, and left a legacy of disease and environmental contamination that continues to this day. The Bhopal tragedy is the most devastating industrial disaster in human history, and the political shock of a foreign corporation causing mass death in an Indian city created the political will to enact comprehensive environmental protection legislation that had previously been unavailable.

But the Environment Protection Act, for all its ambition, was designed within a constitutional framework that gave the central government broad powers to issue notifications, make rules, and set standards, while providing limited mechanisms for independent enforcement, citizen participation, or judicial oversight of the executive's environmental regulatory decisions. The Central Pollution Control Board and the State Pollution Control Boards established under the Act and its companion legislation are statutory bodies under administrative control, not independent constitutional institutions. Their scientific and technical staff are civil servants subject to the normal hierarchies and incentive structures of the government bureaucracy. Their decisions can be, and frequently are, influenced by the political priorities of the government in power.

The capture of environmental regulatory agencies by the industries they regulate is not a uniquely Indian problem: it is a problem documented in every country with a significant industrial economy and a system of environmental regulation. The political economy of regulatory capture is well understood: regulated industries have strong concentrated interests in influencing regulatory outcomes, while the public interest in environmental protection is diffuse and less immediately motivating of political action. Industries devote substantial resources to

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lobbying, to cultivating relationships with regulatory officials, to funding research that supports their preferred regulatory outcomes, and to revolving-door employment of regulatory officials who have left government service. The result, across industries and across countries, is a systematic tendency for regulatory agencies to drift toward serving the interests of the regulated rather than the regulating.

In India, these universal tendencies are greatly intensified by the constitutional framework's concentration of power in the executive and its resulting vulnerability to political pressure. When a Chief Minister of an Indian state personally approves an industrial project, when a Union Minister has a personal or political relationship with the promoters of a project, when a Prime Minister has made the rapid approval of infrastructure and industrial investment a signature policy, the regulatory agencies operating under these political principals face enormous pressure to facilitate approval rather than to enforce environmental standards. The constitutional framework provides no structural protection against this pressure.

The history of environmental clearances in India is a history of systematic regulatory failure driven by this political economy. The Comptroller and Auditor General of India, the Supreme Court's various committees on environmental governance, the Ministry of Environment's own Forest Advisory Committee reports, journalistic investigations, and independent academic research have all documented, repeatedly and exhaustively, a pattern in which environmental clearances are granted for projects on the basis of inadequate Environmental Impact Assessments, in which cumulative impacts on ecosystems are not assessed, in which public consultation processes are conducted as bureaucratic formalities rather than as genuine opportunities for affected communities to participate in decisions about their environments, and in which conditions attached to clearances are rarely monitored or enforced after the project begins construction.

The 2020 Draft Environmental Impact Assessment Notification, which proposed significant dilutions of the public consultation process, post-facto regularization of projects that began construction without proper clearance, and expanded exemptions for projects in sensitive ecosystems, was one of the most significant recent moments in this long history of regulatory failure. The notification attracted unprecedented public opposition, with over two million comments submitted in the public consultation process, the largest public response to any regulatory notification in Indian history. The opposition came from environmental activists, scientists, tribal communities, fishing communities, farmers, lawyers, and citizens across the country. The notification was ultimately not finalized in its original form, partly because of this public pressure, but the government's attempt to weaken the EIA framework is symptom of the systematic tendency to subordinate environmental protection to industrial facilitation that characterizes the existing constitutional framework.

1.3 The Forest Governance Crisis: Colonial Inheritance and Contemporary Dispossession

India's forest governance system is one of the most revealing examples of the persistence of colonial administrative frameworks in the contemporary constitutional order. The Indian Forest Act of 1927, enacted by the British colonial government and still in force in modified form in several states, was designed not to protect forests as ecosystems but to manage forests as

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commercial resources for the colonial state, primarily for timber extraction, and to control and restrict the access of forest-dwelling communities to forests that they had used and managed for generations.

The 1927 Act created a classification system of reserved forests, protected forests, and village forests that gave the colonial Forest Department sweeping powers over forest access, including the power to criminalize activities, such as grazing, fuel wood collection, and shifting cultivation, that forest-dwelling communities had practiced as part of their traditional livelihood systems. The Act created no mechanisms for community participation in forest management and no recognition of customary rights over forest resources. It was, in the language of this textbook's overall argument, an instrument of colonial dispossession given legal form.

Independent India did not significantly reform this framework. The Forest Conservation Act of 1980 added further layers of central government control over forest land use, requiring central approval for any diversion of forest land to non-forest purposes. This provision has had some positive effects in preventing the most egregious instances of forest clearance, but it has also created a bureaucratic system of forest governance that continues to treat forest-dwelling communities as encroachers and obstacles rather than as the legitimate custodians of the forest ecosystems they inhabit.

The Forest Rights Act of 2006 was a transformative piece of legislation that attempted to undo the historical injustice of forest governance by recognizing the rights of Scheduled Tribe communities and other traditional forest dwellers over forest land and resources. The Act recognized individual land rights over forest land that communities had been cultivating for generations, community rights over forest resources including non-timber forest produce, and the right of Gram Sabhas to protect and manage community forest resources. It was, in the legislative tradition of this country, a genuinely progressive law, one that took seriously the constitutional commitment to the rights of tribal communities and attempted to translate it into enforceable legal entitlements.

But the implementation of the Forest Rights Act has been a story of systematic subversion by precisely the forest bureaucracy that the Act was intended to constrain. State Forest Departments, whose institutional identity, budget, and power derived from the colonial model of forest management, saw the Forest Rights Act as a threat to their authority. They resisted the recognition of rights in numerous ways: through the rejection of claims on technical grounds, through the failure to demarcate boundaries of recognized land rights, through the continued filing of criminal cases against forest communities for activities that the Act was supposed to legalize, and through the use of the Supreme Court's order in the Writ Petition (Civil) 109 of 2008 case, in which the court initially ordered the eviction of those whose claims under the Forest Rights Act had been rejected, to create a threat of mass displacement that was subsequently stayed but never fully resolved.

The result is that the Forest Rights Act, more than fifteen years after its enactment, has not delivered its constitutional promise to the majority of those entitled to its protections. Hundreds of thousands of claims are still pending determination. Millions of forest dwellers live under the threat of eviction, unable to invest in their land or their communities because their tenure is

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insecure. And the forest bureaucracy continues to exercise administrative power over forest communities that the Forest Rights Act was supposed to transfer to democratic Gram Sabhas.

1.4 Water Governance and the Constitutional Failure of Integrated Management

Water governance in India is perhaps the most consequential domain of constitutional and governmental failure in the environmental sphere. Water is constitutive of Indian civilization in a way that is difficult to overstate: the great rivers of the subcontinent, the Ganga, the Yamuna, the Brahmaputra, the Godavari, the Krishna, the Cauvery, the Narmada, the Indus and its tributaries, are not merely physical resources but are the living foundations of the agricultural systems, the cultural practices, the spiritual traditions, and the urban settlements that have shaped Indian life for thousands of years.

The constitutional framework for water governance is, like the framework for forests, one of division without integration. Water as a subject of legislation is listed in Entry 17 of the State List, meaning that states have primary legislative authority over the management of water resources within their boundaries. But water is a hydrological reality that does not respect state boundaries: the rivers of India flow through multiple states, the groundwater systems that supply a significant fraction of India's irrigation and drinking water are transboundary, and the climate systems that determine rainfall and river flows are global. The constitutional assignment of water governance primarily to states, without an adequate framework for inter-state coordination, has produced a system of chronic water conflicts between states, a system in which the construction of dams and irrigation infrastructure by one state can seriously harm communities downstream in another state without effective constitutional remedy.

The Cauvery water dispute between Karnataka and Tamil Nadu, litigated in various forms over more than a century and constitutionally adjudicated in a series of Supreme Court decisions and Tribunal Awards, illustrates the depth and persistence of these conflicts. The dispute is not merely a technical question of water allocation: it is a constitutional question about how a federal state in which water is a State List subject should manage a shared resource on which the agricultural economies and the political identities of multiple states depend. The constitutional framework has no effective answer to this question: the Supreme Court and the Cauvery Water Disputes Tribunal have issued numerous orders, but the implementation of those orders has been deeply contested, the political mobilization around the dispute has been intense and sometimes violent, and the underlying question of how to govern a shared water resource in a context of increasing scarcity driven by climate change and overextraction has not been resolved.

The groundwater crisis is even more severe and even less constitutionally addressed. India is the world's largest user of groundwater, extracting more groundwater each year than any other country, primarily for irrigation. The level of the water table across the Indo-Gangetic Plain, the primary agricultural heartland of the country, is falling at rates that alarmed researchers have been documenting for years. In parts of Punjab and Haryana, the states that were the center of the Green Revolution and that remain the primary suppliers of wheat and rice for the national public distribution system, the groundwater table has fallen so dramatically that wells drilled at depths that were adequate a generation ago are now dry, and the cost and energy requirements of extracting groundwater have increased substantially. The Pakistan-administered parts of the

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same aquifer system face identical problems, making this a transboundary environmental crisis as well as a domestic one.

The constitutional framework for groundwater governance is essentially nonexistent. There is no national groundwater law. The Model Groundwater Bill that the central government has been circulating to states for adoption has remained a model bill, adopted by few states and in weakened form when adopted, because the political economy of groundwater governance is one in which powerful agricultural constituencies resist any restriction on their ability to extract groundwater freely. The constitutional assignment of water to the State List, combined with the absence of a central constitutional framework for the conservation of a shared and depleting resource, has produced a situation in which the short-term interests of current water users are systematically privileged over the long-term interests of all users, including the users who will need water in the future.

CHAPTER TWO: THE RANJITSINH JUDGMENT AND THE CONSTITUTIONAL RIGHT TO BE FREE FROM CLIMATE HARM

2.1 The Case and Its Constitutional Significance

The Supreme Court's judgment in M.K. Ranjitsinh and Others versus Union of India and Others, delivered in March 2024, is among the most constitutionally significant environmental decisions in the history of Indian jurisprudence. For the first time, the Supreme Court explicitly recognized that the right to be free from the adverse effects of climate change is a fundamental right under Articles 14 and 21 of the Constitution. The Court held that rising sea levels, food scarcity from failed crops, droughts, and pollution disproportionately affect the poor, indigenous communities, and other vulnerable populations, and that this disproportionate impact has constitutional significance under the equality guarantee of Article 14.

The judgment placed India within a growing global movement toward recognizing environmental protection as a human right. Portugal was the first country to enshrine the right to a healthy environment in its Constitution in 1976, and since then over 155 countries have incorporated some form of this right through constitutional provisions, statutory law, or regional human rights treaties. Health and Human Rights Journal The Ranjitsinh decision is therefore not an isolated development but part of a global constitutional convergence around climate rights that the Indian Supreme Court has belatedly but significantly joined.

The case arose from a challenge to the setting up of wind turbines and solar energy infrastructure in the habitat of the Great Indian Bustard, a critically endangered bird species, in the Thar Desert of Rajasthan. The conflict pitted the renewable energy targets of the central government, which had designated large areas of Rajasthan as priority zones for solar and wind energy development, against the conservation obligations of the state under the Wildlife Protection Act and under the constitutional duty to protect the environment. The Supreme Court was initially asked to balance these competing interests in the narrow context of the Great Indian Bustard's habitat.

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But the Court used the case as an opportunity to articulate a broader constitutional principle. It held that the right against the adverse effects of climate change is not merely a policy desideratum but a fundamental right grounded in Articles 14 and 21. It recognized that India lacks unified climate change legislation but noted that its statutory landscape reflects sustained legislative intent to combat environmental degradation. It highlighted Articles 48A and 51A(g) for imposing duties on the state and citizens to protect the natural environment. And it ordered a balancing of the renewable energy development goals of the government against the conservation of species and habitats that are themselves threatened by the climate disruption that the renewable energy infrastructure is intended to address.

The jurisprudential significance of the Ranjitsinh judgment goes beyond the specific order the Court made about the Great Indian Bustard's habitat. It establishes for the first time a constitutional basis for climate litigation in India that is grounded not merely in the creative reading of Article 21 but in an explicit judicial recognition that climate harm is a constitutional rights violation. This opens the possibility of a new generation of climate litigation in India in which citizens and communities affected by climate-induced harm, whether from extreme heat events, flooding, drought, or sea level rise, can seek constitutional remedies from the courts on the ground that their fundamental rights have been violated by the state's failure to take adequate climate action.

2.2 The Limitations of a Judgment-Made Climate Right

However, the Ranjitsinh judgment, important as it is, should not be mistaken for a solution to the constitutional deficit in climate governance. It is a significant step, but it is a step taken within the limitations of India's constitutional framework that this textbook has consistently identified: the limitations of judicial interpretation as a substitute for constitutional provision, the limitations of case-by-case adjudication as a framework for systemic change, and the limitations of a constitutional architecture that concentrates power in the executive in ways that constrain even the most progressive judicial decisions.

Indian courts are increasingly receptive to arguments linking climate change to fundamental rights such as health, livelihood, and human dignity. Judicial discourse has begun to recognize that climate impacts disproportionately affect vulnerable communities, thereby strengthening the relevance of environmental justice and equity in climate-related cases. ResearchGate But the movement from judicial recognition to effective implementation is a movement that has historically been long, contested, and frequently disappointing in the Indian context.

Consider the trajectory of the Supreme Court's environmental jurisprudence more broadly. The Court has recognized the right to a clean environment as part of Article 21 since the M.C. Mehta cases of the late 1980s. It has held that industries that pollute have constitutional obligations to those they harm. It has issued elaborate directions for the cleaning of the Yamuna river, for the control of air pollution in Delhi, for the regulation of industrial effluent discharge, and for the protection of coastal ecosystems. And yet the Yamuna remains among the most polluted rivers in the world, the air quality of Delhi and several other Indian cities routinely reaches levels that scientists describe as equivalent to smoking multiple cigarettes per day, industrial pollution

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continues to devastate communities in Jharkhand, Odisha, and coastal Andhra Pradesh, and the coastal regulation zone is still routinely violated for tourism and industrial development.

This gap between judicial direction and environmental reality is not primarily a failure of judicial courage or judicial intelligence. It reflects the structural inability of courts to manage the complex, resource-intensive, and politically contested work of implementing environmental governance at the scale of a country of 1.4 billion people across thousands of distinct ecosystems. Courts can declare rights. They can issue remedial orders. They can hold officials in contempt when their orders are violated. But they cannot create the institutional capacity, the monitoring systems, the enforcement mechanisms, the financial resources, and the political will that are necessary for environmental governance to actually protect the environment.

The Ranjitsinh judgment, absent constitutional reform of the institutional framework for climate governance, will suffer the same fate as the Yamuna cleanup orders, the Delhi air pollution orders, and the coastal zone protection orders: repeated judicial engagement, partial and contested implementation, and continuing environmental degradation. The constitutional right to be free from climate harm, declared by the Court as a fundamental right, will remain a right in theory rather than a right in practice until the constitutional order is reformed to create institutional frameworks capable of enforcing it.

2.3 The Ridhima Pandey Climate Petition and the Challenge of Climate Accountability

In February 2025, the Supreme Court issued a significant procedural order in Ridhima Pandey versus Union of India, a case that began as a petition filed by a nine-year-old girl from Uttarakhand in 2017, asking the Court to direct the central government to take adequate action on climate change. The Court acknowledged the inadequacies of the extant legal framework in addressing the challenges posed by climate change. For a holistic assessment of the issue, it impleaded eight Indian ministries to ensure convergence of ideas, collaborative governance, and institutional synergy for the operationalisation of climate policies. Wy4cj The Order itself recognized that current Indian laws remain deficient in addressing the climate change crisis.

The Ridhima Pandey case represents the emergence of a new form of constitutional climate litigation in India: litigation not about specific projects or specific polluters but about the systemic inadequacy of the state's response to the climate crisis as a whole. This form of litigation, sometimes called systemic climate litigation or structural climate litigation, has been developing globally since the Dutch Urgenda Foundation case of 2019, in which the Dutch Supreme Court ordered the government to reduce greenhouse gas emissions more rapidly than it had planned, on the ground that the government's planned emission reductions were constitutionally inadequate to protect citizens' fundamental rights.

The constitutional theory underlying systemic climate litigation is straightforward: if the right to life, the right to health, and the right to a clean environment are fundamental rights, and if the state's failure to take adequate action to address climate change foreseeably threatens those rights for large numbers of its citizens, then the state has a constitutional obligation to take adequate climate action, and citizens have constitutional standing to seek judicial enforcement of that obligation. This theory is supported by the Ranjitsinh judgment's recognition of climate rights as

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fundamental and by the Court's recognition in the Ridhima Pandey order that the current legal framework is deficient.

But the systemic climate litigation theory also faces serious institutional challenges in the Indian constitutional context. The question of what constitutes adequate climate action is one that involves complex scientific judgments, economic tradeoffs, and political choices that courts are not ideally positioned to make. The question of who bears the costs of accelerated climate action, and how those costs should be distributed across social groups and across time, is precisely the kind of distributive question that democratic political processes are supposed to address. And the question of whether a court order directing the government to reduce emissions more rapidly than it has planned can actually be implemented, in a political environment where the government has strong incentives to prioritize short-term economic growth over long-term climate action, is one that the history of Indian judicial environmental governance answers with caution rather than optimism.

CHAPTER THREE: THE NATIONAL GREEN TRIBUNAL AND THE LIMITS OF SPECIALIZED ENVIRONMENTAL ADJUDICATION

3.1 The Tribunal's Constitutional Status and Institutional Architecture

The National Green Tribunal, established by the National Green Tribunal Act of 2010, was one of the most significant institutional innovations in Indian environmental governance of the early twenty-first century. The Tribunal was designed to provide fast, specialized adjudication of environmental disputes, with the expertise to understand complex scientific and technical issues, the speed to provide timely remedies for environmental harm, and the independence from the ordinary political pressures that affect both the executive and the regular judiciary.

The constitutional basis of the NGT is Article 21, the right to life, as interpreted to include the right to a healthy environment, together with Article 48A's direction to the state to protect the environment. The Act gives the NGT jurisdiction over all civil cases relating to environmental protection and conservation of forests and other natural resources, including enforcement of any legal right relating to environment, and gives it the power to provide relief and compensation to victims of pollution and other environmental damage, for restitution of property, and for restitution of the environment.

In its early years, the NGT demonstrated remarkable institutional energy. Under the leadership of its first Chairperson, Justice Swatanter Kumar, the Tribunal took on cases of extraordinary breadth and complexity, issuing orders on the Yamuna river cleanup, the regulation of diesel vehicles in Delhi, the management of solid waste, the protection of wetlands, the regulation of construction in the Aravalli range, and dozens of other major environmental issues. The Tribunal's orders were specific, detailed, and technically informed in ways that general court orders had rarely been, and they imposed meaningful accountability on both polluting industries and regulatory agencies.

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But the NGT has faced severe institutional pressures that have substantially reduced its effectiveness, and these pressures illuminate the structural constitutional problems that afflict all efforts at environmental governance reform within the existing framework.

The first pressure is the challenge of government litigation. The Union of India and state governments are parties in a significant proportion of NGT cases, as respondents in cases where regulatory agencies are alleged to have approved environmentally harmful projects, failed to enforce environmental standards, or acted in ways that damaged the environment. The government, in its capacity as a litigant before the NGT, has at various times challenged the Tribunal's jurisdiction, sought to stay its orders, appealed its decisions to the Supreme Court, and otherwise used the legal process to delay and complicate the enforcement of environmental standards. The constitutional framework's concentration of environmental regulatory authority in the executive creates the paradox in which the same executive that has primary responsibility for environmental governance is also the primary respondent in cases alleging the failure of environmental governance.

The second pressure is the attrition of institutional capacity. The NGT was initially constituted with judicial members drawn from the higher judiciary and expert members drawn from the scientific community. Both categories of members bring specialized knowledge that is essential to the Tribunal's function. But the process of appointment and the terms of service for NGT members have been problematic. Appointments have been delayed, vacancies have persisted for extended periods, and the independence of the appointment process from executive control has been questioned. The Supreme Court's collegium system for judicial appointments does not apply to the NGT, and the appointment process is substantially controlled by the government, creating obvious risks of political influence over the constitution of a Tribunal that regularly decides cases against the government.

The third pressure is the geographic concentration of the NGT's principal bench in New Delhi, with regional benches in Chennai, Pune, Bhopal, and Kolkata. For communities affected by environmental harm in remote tribal areas, in coastal fishing villages, in farming communities in the middle of the country, the physical and financial distance from the NGT's benches is a significant barrier to access. Environmental justice, like all constitutional justice in India, is theoretically available to all but practically accessible primarily to those with the resources to navigate a complex, expensive, and geographically concentrated legal system.

3.2 The Dilution of Environmental Standards Under Political Pressure

One of the most important functions of an effective environmental legal framework is to maintain environmental standards even when the short-term economic and political costs of maintaining them are high. The test of constitutional environmental governance is not how well the framework performs when environmental protection is politically costless but how well it performs when powerful interests are pressing for the relaxation of standards.

The Indian constitutional framework has consistently failed this test. The history of Indian environmental law includes a pattern of standards being diluted under political pressure, often in

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the name of development, employment, or national interest, in ways that have systematically and predictably harmed the communities and ecosystems that the standards were designed to protect.

The dilution of the coastal regulation zone rules, which govern development activity in the ecologically sensitive areas along India's coastline, is one of the most documented examples of this pattern. The original Coastal Regulation Zone Notification of 1991, issued under the Environment Protection Act, established strict restrictions on construction and industrial activity within specified distances of the high tide line, with different levels of protection for ecologically sensitive areas including mangroves, coral reefs, and breeding grounds of marine species. These restrictions were consistently challenged by tourist resort developers, industrial concerns, and port authorities, and over successive governments they have been progressively weakened, with the restricted zones narrowed, exemptions multiplied, and the categories of prohibited activities reduced.

The 2019 Coastal Regulation Zone Notification, issued by the Modi government, represented the most substantial dilution to date. It reduced setback distances from the high tide line, expanded the exemptions for tourism infrastructure, created new categories of allowed development in ecologically sensitive areas, and removed several categories of activities from the environmental clearance requirement. The notification was challenged before the NGT and the Supreme Court, with environmental lawyers arguing that it violated the constitutional right to a healthy environment and the state's duty to protect the coastal environment. The litigation is still continuing, and in the meantime construction and development activity in coastal zones has expanded significantly.

This pattern of dilution under political pressure is not limited to coastal governance. The exemptions from environmental clearance requirements for projects below specified capacity thresholds have been progressively expanded, meaning that a larger proportion of development activity can proceed without independent environmental assessment. The public consultation requirements for environmental clearances, already weakened by the procedures for granting draft clearances before public consultation is complete, have been further undermined by administrative practices that treat the public hearing as a bureaucratic formality rather than as a genuine opportunity for affected communities to participate in decisions about their environment.

The constitutional framework is structurally unable to prevent these dilutions because the authority to issue and amend environmental notifications rests with the central executive, and the checks on that authority, the NGT, the Supreme Court, parliamentary scrutiny, are all weaker than the political forces driving the dilutions. The NGT can slow the process, can sometimes reverse specific decisions, can require reconsideration. The Supreme Court can impose stays and issue directions. But neither institution can fundamentally alter the political economy that consistently generates pressure for the weakening of environmental standards.

CHAPTER FOUR: THE CONSTITUTIONAL ECONOMY OF ECOLOGICAL DESTRUCTION: CORRUPTION, CAPTURE, AND THE CRIMINALIZATION OF ENVIRONMENT

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4.1 The Political Economy of Environmental Clearances

The system of environmental clearances for industrial and infrastructure projects is, in theory, a constitutional instrument of environmental protection: a mechanism through which the state exercises its constitutional duty to protect the environment by ensuring that development activity is assessed for its environmental impacts before it proceeds, and by attaching conditions designed to minimize those impacts. In practice, the environmental clearance system has become one of the most productive sites of political corruption in Indian governance.

The structure of the environmental clearance system creates powerful incentives for corruption. A project developer who receives an environmental clearance can proceed with a project that may be worth hundreds or thousands of crores of rupees. A project developer who is denied a clearance, or who is granted a clearance with conditions that significantly increase the cost of the project, may lose that investment entirely. The decision about whether a clearance is granted, and on what conditions, is made by officials of the Ministry of Environment, Forests and Climate Change and its regional offices, subject to the recommendations of Expert Appraisal Committees composed of technical experts. These officials and committee members have enormous discretionary authority, limited external accountability, and, in many documented cases, inadequate resources to conduct rigorous independent evaluation of the complex Environmental Impact Assessments they are charged with reviewing.

This structure is a textbook case of what economists call rent-seeking: the use of regulatory authority to extract economic value from those who need regulatory approvals. The documented cases of corruption in the environmental clearance system include: the payment of bribes to Ministry of Environment officials for the expedited processing of clearances, the appointment of individuals connected to project developers to Expert Appraisal Committees, the doctoring of Environmental Impact Assessment reports to understate impacts, the use of bogus public hearings in which the genuine affected communities are excluded from the formal process, and the grant of clearances that are subsequently found, by NGT or court examination, to have been granted on the basis of factually incorrect or incomplete information.

The documentation of these practices is extensive. Parliamentary Standing Committee reports on the Ministry of Environment have repeatedly noted the inadequacy of the clearance process. Reports by the Comptroller and Auditor General have documented specific instances of clearances granted without proper assessment. Investigative journalism has exposed individual cases. And the volume of successful NGT and Supreme Court challenges to environmental clearances, cases in which courts have found that clearances were granted without proper assessment or in violation of procedural requirements, is itself evidence of systemic dysfunction.

The constitutional dimension of this corruption is profound. The right to a healthy environment, recognized as a fundamental right under Article 21, is being traded in the environmental clearance market for financial and political benefit. The constitutional duty of the state to protect the environment, affirmed in Article 48A, is being systematically violated by the officials and institutions charged with discharging it. And the citizens and communities who bear the environmental costs of improperly cleared projects, who breathe the air polluted by industrial plants that should not have been sited where they are, who drink the water contaminated by

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mines whose clearances did not properly assess their impact on local water quality, who lose their livelihoods when coral reefs are destroyed by construction that should not have been permitted, are victims of a constitutional crime for which the existing constitutional framework provides inadequate remedy.

4.2 Forest Clearances and the Mining-Politics Nexus

The forest clearance system, which operates under the Forest Conservation Act of 1980 and requires central government approval for any diversion of forest land to non-forest purposes, is another domain in which the gap between constitutional environmental protection and institutional reality is vast and consequentially damaging.

The mining industry, which is among the most ecologically destructive of human economic activities, is also among the most politically influential. India is home to enormous mineral wealth: iron ore, bauxite, coal, copper, manganese, limestone, and other minerals are found in quantities that make India one of the most minerally endowed countries in the world. The distribution of mineral wealth is, however, heavily concentrated in areas that are also home to the densest concentrations of India's tribal populations, the forests of Jharkhand, Odisha, Chhattisgarh, and parts of Maharashtra, Andhra Pradesh, and Telangana. The result is a systematic and constitutionally devastating conflict between the mineral extraction interests of industrial capital and the land and forest rights of the tribal communities who inhabit the mineral-rich regions.

The forest clearance process for mining projects requires, at least in principle, the free, prior, and informed consent of the Gram Sabha of the affected village, as required by the Forest Rights Act's provisions on community forest rights. This consent requirement is one of the most important constitutional protections that tribal communities have against the diversion of their forest lands for mining. It means that a mining project cannot proceed over the constitutional objection of the community whose forest land it proposes to use.

But in practice, the consent requirement has been systematically circumvented. Gram Sabha meetings have been conducted without proper notice, with participants who are not bona fide residents of the village, with threats or inducements to produce a favorable outcome, with procedural irregularities that allow the outcome to be challenged after the fact, and with state government officials who preside over the meetings in ways that favor the project developer. The fact that the language in which the proceedings are conducted may not be the language of the community, that the legal implications of consent or refusal may not be explained to participants in terms they can understand, and that the power differential between a community facing the combined authority of the state and a major corporation on one side and their own limited resources on the other, are factors that the existing constitutional framework is wholly inadequate to address.

The cases of the Dongria Kondh tribe's resistance to the Vedanta bauxite mining project in the Niyamgiri Hills of Odisha, the Mahan coal block struggle in Madhya Pradesh, the forest clearances for the POSCO steel plant in Odisha, and hundreds of less nationally prominent cases, illustrate a consistent pattern: the constitutional rights of tribal communities to give or withhold

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free, prior, and informed consent to the use of their forest lands are formally recognized but substantively denied through administrative processes designed to produce the outcomes that the industrial and political interests driving the projects require.

The political economy of this systematic denial is straightforward and brutally honest when examined without the diplomatic obscurantism that characterizes official discourse. Mining companies contribute to political party funding. State governments, dependent on royalty revenues and eager to demonstrate their credentials as investment-friendly, have strong incentives to facilitate mining approvals. The administrators and foresters who manage the clearance process operate within a political system that rewards facilitation and punishes obstruction. The tribal communities who resist projects are politically marginal, often literally physically remote, and lack the resources to mount sustained legal challenges. The constitutional protections they have are real, but they operate within an institutional system that is comprehensively stacked against them.

4.3 Coal, Climate, and Constitutional Hypocrisy

India's relationship with coal is a constitutional contradiction of the highest order. On the international stage, India presents itself as a country committed to the transition to clean energy, a signatory to the Paris Agreement, a proponent of renewable energy expansion, and a participant in global climate governance. The government has set ambitious targets for renewable energy capacity and has made the solar energy sector a major area of domestic and foreign investment.

But domestically, India is also the world's second largest producer and consumer of coal, and coal production and consumption are both projected to increase in the near-to-medium term even as the renewable energy sector grows. The government has continued to auction new coal blocks, to approve new coal mines in forest areas, to expand coal-based power generation capacity, and to resist pressure from climate advocates to set a firm date for phasing out coal.

The constitutional dimension of this contradiction is clear. If the right to be free from the adverse effects of climate change is a fundamental right under Articles 14 and 21, as the Ranjitsinh judgment holds, then the state's continued expansion of coal production and consumption, which contributes directly and causally to the climate change that produces those adverse effects, is constitutionally problematic. The right to life of the millions of Indians whose health is destroyed by coal-related air pollution, whose agricultural livelihoods are disrupted by climate-related droughts and floods, whose coastal communities are threatened by sea level rise, exists in direct constitutional tension with the state's continued commitment to coal-based energy.

This tension has not been addressed by the constitutional framework because the constitutional framework, as argued throughout this textbook, is structured to insulate executive policy choices from constitutional accountability. The government can argue that it is taking reasonable steps to transition to clean energy, that the pace of transition is constrained by legitimate development imperatives, and that the determination of what pace is constitutionally adequate is a political question not amenable to judicial resolution. And in the absence of a specific constitutional provision requiring a pace of decarbonization, or establishing specific emission reduction

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obligations as constitutional requirements, this argument has considerable force in the current institutional framework.

The international comparison is instructive. Germany's Constitutional Court, in the Neubauer versus Germany decision of 2021, held that the federal government's climate protection law was constitutionally inadequate because it deferred too much of the emission reduction burden to future generations, imposing an unjust intergenerational constraint on the freedom of future citizens. The Court did not prescribe specific emission targets but directed the government to revise the law to specify adequate reduction pathways for the period after 2030. This decision, which drew on the constitutional guarantee of dignity and the constitutional protection of fundamental rights for future generations, represents the kind of constitutional climate accountability that the Ranjitsinh judgment gestures toward but that the existing Indian constitutional framework cannot fully sustain.

CHAPTER FIVE: THE ENVIRONMENTAL VICTIMIZATION OF THE POOR: CONSTITUTIONAL INEQUALITY AND ECOLOGICAL INJUSTICE

5.1 Environmental Inequality as Constitutional Inequality

One of the most fundamental but least constitutionally addressed dimensions of the ecological crisis of India is that the costs and benefits of environmental degradation are profoundly and systematically unequal. The benefits of the economic activities that produce environmental degradation, the profits of mining, the returns on industrial investment, the gains of infrastructure development, accrue primarily to the economically and politically powerful. The costs, the polluted air and water, the destroyed livelihoods, the displacement from land and forests, the health consequences of industrial contamination, fall primarily on the poor, the rural, the tribal, and the socially marginalized.

This pattern of ecological injustice, in which the environmental costs of economic development are systematically transferred from those who profit from development to those who bear its burdens, is not an accidental consequence of market processes that the state has failed to correct. It is, in significant measure, a structural product of the constitutional framework: of a political system in which the poor and marginalized have limited voice, in which the institutions of environmental governance are captured by the interests that profit from environmental degradation, in which the legal system is too expensive and too slow to provide timely remedy for environmental harm, and in which the concentration of power in the executive means that environmental decisions are made by officials who are accountable primarily to those with economic and political power rather than to those who bear the environmental costs.

The constitutional right to equality under Article 14 is directly implicated by this pattern of ecological injustice. If the state's environmental policies systematically impose the costs of development on the most marginalized communities while directing the benefits to the most privileged, the state is violating the equal protection guarantee not merely in a formal sense but in the substantive sense that the Supreme Court has consistently recognized: the sense of

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substantive equality that requires not merely formal equal treatment but attention to the differential impacts of state action on differently situated groups.

But the Article 14 analysis of environmental inequality has rarely been developed by Indian courts in the context of environmental governance. The jurisprudence of environmental rights under Article 21 has been more developed, but it has focused more on the rights of affected communities to clean air and water than on the structural inequality in the distribution of environmental costs and benefits that is the deeper constitutional problem.

The concept of environmental justice, developed in the United States in the 1980s in the context of evidence that toxic waste facilities and industrial plants were disproportionately sited in communities of color and poor communities, provides a constitutional framework for analyzing this structural inequality. Environmental justice, in its legal form, requires not merely that individual environmental regulations be enforced but that the cumulative environmental burdens placed on specific communities be assessed and addressed, that the distributional consequences of environmental policies be considered in the decision-making process, and that the communities most affected by environmental harm have meaningful participation in the decisions that affect them.

The Indian constitutional framework has not been developed to incorporate an environmental justice analysis in this sense. The EIA process requires assessment of the environmental impacts of individual projects but does not require assessment of the cumulative environmental burdens on specific communities. The public participation requirements for environmental clearances are procedural, not substantive: they require that a hearing be held, not that the concerns of affected communities have any genuine impact on the decision. And the legal aid system is inadequate to ensure that poor and marginalized communities can effectively vindicate their environmental rights before the NGT or the courts.

5.2 Displacement, Dispossession, and the Violence of Development

The most severe form of environmental victimization experienced by India's poor and marginalized communities is displacement: the forced removal of communities from their land, their forests, their coastal zones, and their urban settlements for development projects, mining operations, dam construction, and urban regeneration, without adequate constitutional protection or legal remedy.

The scale of development-induced displacement in India is staggering. Estimates of the total number of people displaced by development projects since independence vary from 60 million to over 65 million, making India possibly the country with the highest number of development-displaced persons in the world. These are not abstractions. They are real people, mostly from scheduled tribe and scheduled caste communities, mostly poor, mostly from rural areas, who have lost their land, their livelihoods, their communities, and often their cultural identity to development projects whose benefits they do not share and whose costs they disproportionately bear.

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The constitutional framework for displacement and resettlement has been weak throughout the post-independence period. The Land Acquisition Act of 1894, which provided the primary legal basis for compulsory land acquisition until 2013, was another colonial inheritance: a law designed to facilitate the acquisition of land for colonial purposes with minimal regard for the rights and interests of those displaced. The compensation provisions of the 1894 Act were systematically inadequate, and the procedures for determining compensation were vulnerable to manipulation by district officials with interests in minimizing the compensation paid.

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act of 2013 represented a significant improvement, requiring social impact assessment, introducing a consent requirement for acquisition of land for private companies, setting higher compensation levels, and mandating comprehensive rehabilitation and resettlement. But the 2013 Act was substantially weakened by the Land Acquisition Ordinance of 2014-2015, which the Modi government repeatedly issued to exempt a wide range of projects from its key protective provisions, including the social impact assessment requirement and the consent requirement. Although the ordinance was ultimately not converted into permanent legislation, several states subsequently enacted their own amendments to the 2013 Act that achieved similar dilutions of its protections.

The constitutional dimension of this displacement crisis is fundamental. The right to life under Article 21, as the Supreme Court has held, includes the right to livelihood. The displacement of communities from the land and forests on which their livelihoods depend is therefore, in constitutional terms, a deprivation of the right to life. But the constitutional framework has been systematically inadequate to prevent this deprivation, partly because the courts have developed doctrines, primarily based on the inadequacy of the displaced community's formal legal title to the land they occupy, that allow displacement to proceed despite the clear livelihood and dignity harms it causes.

5.3 Industrial Pollution and the Constitutional Abandonment of Affected Communities

The communities that live downwind and downstream from major industrial facilities in India face a specific form of environmental victimization that the constitutional framework has consistently failed to address adequately. Industrial pollution in India has caused and continues to cause massive, documented harm to the health, the livelihoods, and the environments of communities across the country. The evidence is overwhelming and has been systematically documented by researchers, journalists, public health professionals, and independent assessors.

The industrial pollution of water in the Periyar river basin in Kerala, where a cluster of chemical industries has contaminated the river with mercury, organochlorines, and other toxic chemicals for decades; the air pollution in the industrial belt of Jharkhand and Chhattisgarh, where coal mining and thermal power generation have created levels of particulate matter and sulfur dioxide that are among the highest in the world; the contamination of groundwater in industrial zones from Vapi in Gujarat to Patancheru in Telangana, where communities drink water laced with heavy metals and industrial chemicals; these are not hypothetical constitutional violations. They are ongoing constitutional violations, documented in scientific literature, reported in journalism,

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litigated in courts, and largely unadjusted by the enforcement mechanisms that the constitutional framework has established.

The communities affected by this industrial pollution are, without exception, economically and politically marginal. They do not have the resources to relocate to cleaner areas. They do not have the political connections to pressure regulatory agencies to enforce the standards that, nominally, should protect their environment. They do not have the legal knowledge or financial resources to mount effective constitutional litigation. And when they do manage to bring cases before the courts or the NGT, they face corporations with vast legal resources, regulatory agencies with structural incentives to protect their relationship with the industries they regulate, and a legal process so slow that by the time a case is decided, the health and livelihood damage it was intended to prevent has already occurred over many years or decades.

The constitutional analysis of this situation is straightforward. The state has a constitutional duty, under Articles 21 and 48A, to protect these communities from the harm that industrial pollution causes to their health, their livelihoods, and their environment. The state is manifestly failing this duty. And the existing constitutional framework, for the reasons traced throughout this chapter, is structurally incapable of compelling the state to fulfill it. Only fundamental constitutional reform can change this.

CHAPTER SIX: THE RIGHTS OF NATURE, ECOCIDE, AND THE PHILOSOPHICAL TRANSFORMATION OF ENVIRONMENTAL LAW

6.1 The Rights of Nature: From Metaphor to Legal Reality

The concept of the rights of nature is one of the most intellectually exciting and practically significant developments in contemporary environmental law and constitutional theory. The idea, most influentially articulated by the American legal scholar Christopher Stone in his 1972 essay "Should Trees Have Standing?", holds that natural objects, forests, rivers, ecosystems, and perhaps the biosphere as a whole, should have legal rights of their own, cognizable by courts, and not merely as objects of human ownership or as instruments of human welfare.

Stone's argument was essentially jurisprudential: he observed that the history of law included the progressive expansion of legal personality to previously excluded subjects, from women to corporations to ships to municipalities, and that there was no principled reason why this expansion should stop at the boundaries of the human world. If a corporation can have legal rights, if a trust can have legal standing to sue, if a nation can be a legal person, then there is no logical reason why a forest or a river, entities of far greater importance to human life and far greater capacity for independent existence, should be excluded from legal personality.

The practical force of Stone's argument has been demonstrated in several constitutional and legislative developments in the half century since it was made. Starting from the first Rights of Nature ordinance in a small Tamaqua community in Pennsylvania in 2006 to the first constitutional rights of nature in Ecuador in 2008, the movement has now spread across

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continents. It reached Europe in 2022 with the first national law granting legal personality to Mar Menor lagoon and its basin in Spain. Rights of Nature represents a paradigm shift that is reshaping environmental law, promoting a more ethical and sustainable approach to environmental governance, and setting new legal norms of treating nature as subjects of rights rather than objects of exploitation. ScienceDirect

The most constitutionally developed example of rights of nature is the Ecuadorian Constitution of 2008, which established in its Chapter Seven the rights of Pachamama (Mother Earth), including the right to maintenance and regeneration of life cycles, structure, functions, and evolutionary processes. The Ecuadorian constitutional provisions are not merely hortatory: they have been invoked in litigation before Ecuadorian courts, which have issued orders protecting specific ecosystems on the basis of their constitutional rights rather than merely on the basis of human interests in those ecosystems.

The New Zealand Te Awa Tupua Act of 2017, which granted the Whanganui River legal personality and established a system of guardians to represent the river's interests in legal proceedings, represents a legislative rather than constitutional approach to rights of nature. The Act was the product of a negotiated settlement between the government and the Maori people of the Whanganui, who have a cultural and spiritual relationship with the river that gave practical meaning to the legal personality concept. The Whanganui is Ko te Awa, the River is Me: the Maori understanding that human identity is inseparable from the identity of the river provided the cultural foundation for a legal innovation of global significance.

6.2 India's Contested Experiment with River Personhood

India has its own history with the rights of nature concept, and that history is both inspiring and deeply instructive about the limitations of judicial innovation without constitutional and institutional support.

On March 20, 2017, the High Court of Uttarakhand in India declared the Ganga and Yamuna rivers as living entities, making it the country's first order to give legal rights to rivers. In another order passed ten days later, the same court granted legal personhood to nature in Uttarakhand. Taylor & Francis Online The Uttarakhand High Court orders were remarkable acts of judicial creativity. The Court drew on the tradition of Hindu jurisprudence in which rivers are understood as living entities with inherent dignity, on the international rights of nature movement, on the New Zealand Whanganui model, and on the constitutional right to a healthy environment derived from Article 21, to construct a legal personality for the rivers Ganga and Yamuna.

But the orders were almost immediately challenged. The Uttar Pradesh government, whose territory included a significant stretch of the Yamuna river, argued before the Supreme Court that the High Court had exceeded its jurisdiction by extending legal personality to rivers that flow through multiple states and are therefore subject to inter-state water disputes, and by creating the practical impossibility of holding a river legally responsible for the harm it might cause through flooding or erosion if it had independent legal personality. The Supreme Court stayed the High Court orders pending further hearing.

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In 2017, the Ganges and Yamuna rivers were granted legal personhood in India, but the ruling was suspended. The Uttarakhand High Court in its ruling observed: "The rivers sustained the aquatic life. The flora and fauna are also dependent on the rivers. Rivers are grasping for breath. We must recognize and bestow Constitutional legal rights to Mother Earth." Heinrich Böll Stiftung

The suspension of the river personhood orders illustrates a fundamental problem with attempting to implement the rights of nature concept through judicial interpretation of existing constitutional provisions rather than through explicit constitutional or legislative provision. The institutional and practical implications of river legal personality, questions about who speaks for the river in litigation, questions about how the river's interests are to be determined, questions about how river rights interact with the riparian rights of communities and states along its banks, require careful institutional design that a High Court order, however eloquently written, cannot provide. The rights of nature concept requires constitutional architecture, not merely judicial declaration.

Three emerging legal developments, criminalising ecocide, recognising a human right to a healthy environment, and recognising rights of nature, could play a crucial role in reorienting legal systems to address the triple planetary crisis of climate change, biodiversity loss, and pollution. Taylor & Francis Online The significance of the Indian river personhood cases is therefore not in the specific orders, which were stayed and remain in legal limbo, but in the demonstration of the constitutional and cultural openness to the rights of nature concept that exists in India. This openness, rooted in the deep traditions of Hindu, Buddhist, Jain, and adivasi ecological philosophy that understand human beings as part of nature rather than as its masters, provides a powerful cultural foundation for the constitutional recognition of nature's rights in a reformed Indian constitution.

6.3 Ecocide: The Crime Against the Environment

The concept of ecocide, the large-scale destruction of natural environments, is another legal development of the past decade that is directly relevant to the constitutional governance of ecological destruction in India. The Stop Ecocide International campaign, founded by the late British lawyer Polly Higgins, has been working to establish ecocide as the fifth crime under the Rome Statute of the International Criminal Court, alongside genocide, crimes against humanity, war crimes, and the crime of aggression.

The legal case for ecocide as a crime is powerful. If the systematic destruction of a forest, a river system, a coastal ecosystem, or a climate-regulating natural feature causes mass death among the human communities that depend on it, the mass destruction of the non-human life that constitutes the ecosystem, and the permanent or long-term impairment of the natural processes that sustain life, it is difficult to maintain that such destruction is merely a civil matter or a regulatory violation rather than a crime of the first order.

In the Indian constitutional context, the ecocide concept has several important applications. The systematic and legally contested destruction of forests in tribal areas of Jharkhand and Odisha for coal mining, carried out with the support of state and central governments and the resistance of local communities, resembles in its structural dynamics, if not in its intent, what the ecocide

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literature describes as the reckless disregard of the destruction likely to be caused by an act that severely and either irreversibly or long-terminally damages an ecosystem. The destruction of mangrove ecosystems along India's coasts for aquaculture and industrial development, documented extensively by researchers and environmental organizations, constitutes the kind of large-scale ecosystem destruction that the ecocide framework is designed to address.

The constitutional relevance of ecocide for India is not merely theoretical. If ecocide were incorporated into Indian law, whether through constitutional provision or through criminal legislation, it would provide a legal tool for holding accountable the political and corporate actors whose decisions drive ecological destruction in India. The tribal woman who watches the forest her community has depended on for generations being cleared for a mine approved by politicians with connections to the mining company would have a criminal law framework that acknowledges the scale and severity of what has been done to her community's environment. The fishing community whose coastal ecosystem has been destroyed by industrial development approved through a corrupt clearance process would have a criminal law remedy rather than merely a civil or administrative one.

The incorporation of ecocide into the Indian constitutional and criminal law framework faces obvious political obstacles: the industries that would be most exposed to ecocide prosecution, the mining sector, the fossil fuel sector, the large infrastructure sector, are among the most politically influential in India. But the political obstacles to reform are not constitutional arguments against reform. They are evidence of the power of the interests that constitutional reform must overcome.

CHAPTER SEVEN: INTERGENERATIONAL JUSTICE AND THE CONSTITUTIONAL RIGHTS OF FUTURE GENERATIONS

7.1 The Philosophical Foundation of Intergenerational Justice

The concept of intergenerational justice occupies a central place in environmental constitutional theory, and its philosophical foundations are rich and contested in ways that illuminate the deepest questions about the nature and purpose of constitutional law.

The basic philosophical challenge of intergenerational justice is the representation problem: future generations cannot speak for themselves in current constitutional processes because they do not yet exist. They cannot vote, cannot litigate, cannot organize politically, cannot exercise any of the normal mechanisms through which interests are represented in democratic governance. And yet the decisions made by the current generation, particularly decisions about the use of natural resources, the emission of greenhouse gases, the accumulation of public debt, and the structuring of constitutional institutions, will profoundly shape the conditions of life for future generations in ways that those generations will not have chosen and cannot now consent to.

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John Rawls, in his theory of justice as fairness, addressed intergenerational justice through the concept of the just savings principle: the obligation of each generation to save a sufficient stock of capital, natural and physical, to enable future generations to have just institutions and a decent standard of life. Rawls's framework has been criticized for underspecifying the content of the just savings obligation, but it provides a useful starting point: the constitutional order has an obligation to ensure that the decisions of the current generation do not deprive future generations of the conditions necessary for a decent life.

The environmental dimension of the just savings principle is increasingly urgent. The natural capital that constitutes the foundation of all human welfare, the stable climate, the clean water, the productive soil, the diverse ecosystems, the genetic diversity of living species, is being depleted and degraded at rates that will significantly impair the ability of future generations to sustain themselves. The constitutional order that permits this depletion without constraint is one that violates Rawls's just savings principle, one that is imposing massive and unchosen costs on those who cannot participate in current constitutional processes.

The philosopher Edmund Burke gave perhaps the most politically influential formulation of the intergenerational dimension of constitutional governance in his argument that society is a partnership between the dead, the living, and the yet to be born. Burke's formulation, which was originally a conservative argument against revolutionary constitutional change, has been given an environmental and progressive interpretation by theorists of intergenerational justice who argue that the constitutional order must represent not only the interests of the living but the interests of those yet to be born, who have a stake in the constitutional decisions being made today at least as great as those who will not live to bear its full consequences.

Intergenerational justice is a prevalent idea in contemporary constitutionalism: to date, more than 80 constitutions worldwide contain some reference to the rights or interests of future generations or to the need to preserve natural resources for the benefit of future people. While these constitutional clauses share some common features, closer analysis shows that the understanding of the concept of future generations varies significantly, depending on whether the jurisdiction adopts an anthropocentric or ecocentric approach to issues such as climate change or biodiversity loss. IACL-IADC Blog

7.2 Intergenerational Justice in Indian Constitutional Jurisprudence

The Indian Supreme Court has invoked the concept of intergenerational equity in several environmental cases, most prominently in the cases decided under the Public Trust Doctrine that the Court adopted from American environmental law in the case of M.C. Mehta versus Kamal Nath in 1997. The Public Trust Doctrine holds that certain natural resources, including air, water, sea, and forests, are held in trust by the state for the benefit of the public, including future generations, and that the state cannot alienate or degrade these resources in ways that deprive the public of their beneficial use.

The invocation of intergenerational equity in Indian constitutional law has, however, been more rhetorical than operational. Courts have cited the principle to support environmental protection orders and to justify the invalidation of state actions that permit the degradation of natural

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resources, but the principle has not been developed into a systematic framework of constitutional obligations toward future generations. There is no constitutional provision in India that explicitly recognizes the rights of future generations, no constitutional institution with a mandate to represent the interests of future generations in current political and legal processes, and no constitutional framework for assessing whether current decisions about resource use are consistent with the obligations of intergenerational justice.

The contrast with some other constitutional systems is instructive. The German Basic Law, as interpreted by the Federal Constitutional Court in the Neubauer climate case, holds that constitutional rights must be interpreted in a way that protects the freedom of future generations to make their own constitutional choices, and that policy decisions that impose unchosen and irreversible constraints on the freedom of future generations violate the constitutional rights of those future generations. The Welsh Future Generations Commissioner, established by the Well-being of Future Generations (Wales) Act of 2015, provides a statutory model of an institutional voice for future generations in current governance. The Hungarian Parliamentary Commissioner for Future Generations, established in 2008, provides another model. The New Zealand Office of the Parliamentary Commissioner for the Environment, though not specifically focused on future generations, has developed a strong practice of long-term environmental impact assessment that is directly relevant to intergenerational justice.

India has none of these institutions. The constitutional framework is silent on future generations. The political system, dominated as it is by the short-term electoral incentives that this textbook has analyzed throughout, has systematically negative incentives for intergenerational thinking: politicians are rewarded for decisions that produce immediate visible benefits for current voters and penalized for decisions that impose immediate visible costs on current voters even when those decisions are essential for the welfare of future citizens.

7.3 The Climate Debt and Constitutional Obligation

The concept of climate debt provides a concrete and quantifiable framework for thinking about the intergenerational constitutional obligations that the Indian state bears in the climate context.

India's cumulative greenhouse gas emissions, the total amount of climate-altering gases it has contributed to the atmosphere since industrialization, are much lower than those of the United States, the European Union, and other developed nations. This is an important international equity argument that India has correctly and consistently made in climate negotiations: the historical responsibility for creating the climate crisis lies primarily with the developed world, and the developing world cannot reasonably be expected to sacrifice its development aspirations to solve a problem it largely did not create.

But this international equity argument, which is a valid argument about the distribution of responsibility between countries, does not resolve the domestic constitutional question about the obligation of the Indian state toward Indian citizens, including future Indian citizens, with respect to climate change. India is already the world's third-largest emitter of greenhouse gases in absolute terms, and its emissions are growing rapidly as its economy expands. The domestic victims of climate-related harm in India, whose constitutional rights the Ranjitsinh judgment has

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recognized, are Indian citizens with claims against the Indian state. And the future Indian citizens who will bear the heaviest costs of current climate inaction, because they will live in a more severely disrupted climate than the current generation, have intergenerational justice claims against the current constitutional order that are not satisfied by the international equity argument.

The constitutional resolution of the tension between India's development aspirations, its international climate commitments, and its obligations to current and future citizens requires constitutional provision that the existing framework lacks. A new Indian constitution must address this tension explicitly, establishing both the right of citizens to be free from climate harm, as the Ranjitsinh judgment has declared, and the corresponding obligation of the state to take climate action at a pace and scale consistent with that right, while specifying how the costs and benefits of this obligation are to be distributed justly across social groups and across generations.

CHAPTER EIGHT: INDIA'S INTERNATIONAL ENVIRONMENTAL OBLIGATIONS AND THE DOMESTIC CONSTITUTIONAL GAP

8.1 The Paris Agreement, India's Nationally Determined Contributions, and Constitutional Accountability

India is a party to the Paris Agreement of 2015, under which it has submitted Nationally Determined Contributions (NDCs) specifying its commitments to reduce the greenhouse gas intensity of its GDP, to increase its non-fossil fuel energy capacity, and to create additional carbon sinks through forest and tree cover. India updated its NDCs in 2022 and again in 2025, and the updated commitments are, at least in their headline numbers, consistent with the internationally agreed goal of limiting global warming to 1.5 degrees Celsius above pre-industrial levels, though the assessment of their sufficiency is contested by climate scientists and international observers.

But the constitutional relationship between India's international climate commitments and the rights of Indian citizens is deeply underdeveloped. The Paris Agreement, under India's dualist constitutional framework, is an international obligation of the government but is not directly enforceable as domestic law. The NDCs are executive commitments, not legislative provisions, and they have no constitutional status that would make them enforceable by Indian citizens in Indian courts. The government can revise, dilute, or fail to implement its NDCs without violating any provision of domestic constitutional or statutory law, however serious the consequences for the constitutional rights of Indian citizens that the Ranjitsinh judgment has recognized.

This constitutional gap between international climate obligation and domestic constitutional enforceability is a specific instance of the broader problem that Part Eight of this textbook identified in its examination of India's foreign policy framework: the democratic deficit of foreign policy, in which major international commitments are made by the executive without meaningful legislative or public scrutiny, and implemented, or not implemented, without constitutional accountability.

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The constitutional reform agenda must address this gap by providing for the domestic constitutional status of international environmental obligations, requiring parliamentary approval for major environmental treaties, establishing constitutional provisions for the periodic independent assessment of the government's compliance with its climate and environmental commitments, and creating rights of action for citizens and civil society organizations to seek constitutional remedy when the government's implementation of its international environmental obligations falls below the standard required by constitutional rights.

8.2 Biodiversity Loss and the Constitutional Governance of Living Systems

The crisis of biodiversity loss is, alongside the climate crisis, one of the two most severe ecological crises of the current era. India is one of the world's seventeen megadiverse countries, meaning that it is home to an extraordinary proportion of the world's species diversity relative to its land area. The Western Ghats, the Eastern Himalayas, the Nicobar Islands, and the Sundarbans are among the world's most important biodiversity hotspots, recognized internationally as areas of irreplaceable biological value that are simultaneously among the most severely threatened.

The legal framework for biodiversity governance in India is established primarily by the Biological Diversity Act of 2002, which creates a three-tier system of National Biodiversity Authority, State Biodiversity Boards, and Biodiversity Management Committees at the local level. The Act's primary focus is on access and benefit-sharing, ensuring that those who use genetic resources for commercial or research purposes share the benefits with the communities and regions from which those resources are drawn. This is an important goal, but it represents only a narrow slice of the broader challenge of biodiversity governance.

The constitutional framework for biodiversity protection has the same structural weaknesses as the framework for other aspects of environmental governance: it is distributed across multiple ministries with different mandates, the institutions responsible for implementation are under executive control without adequate independence, the local bodies that have the most direct knowledge of and interest in biodiversity are inadequately empowered, and the economic forces driving biodiversity loss, habitat destruction for agriculture, logging, mining, infrastructure, urban expansion, and climate change, are not effectively restrained by the existing regulatory framework.

The constitutional reform necessary for genuine biodiversity governance must include a constitutional right to biodiversity, understood not merely as a human right to the benefits of biological diversity but as a recognition of the intrinsic value of the diversity of life on earth and of the state's constitutional obligation to protect it. This requires a philosophical shift that the existing constitutional framework, grounded as it is in an anthropocentric understanding of the relationship between human beings and the natural world, is not structured to accommodate.

8.3 The Constitution and India's International Climate Diplomacy

India's position in international climate negotiations has consistently been shaped by the argument that climate justice requires developed countries to take the lead in reducing emissions

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and to provide financial and technological support for developing countries to make clean energy transitions. This argument is principled and well-founded, and it has contributed to significant achievements in climate diplomacy, including the recognition of common but differentiated responsibilities in the Paris Agreement framework and the commitment by developed countries to mobilize climate finance for developing nations.

But India's domestic environmental governance has not always been consistent with its international advocacy for climate justice. The country that argues for climate justice in international forums continues to impose environmental injustice on its own most vulnerable communities through industrial pollution, displacement, forest destruction, and climate inaction. The country that argues for the rights of developing nations to receive climate finance governs its own domestic climate finance allocation in ways that systematically underfund adaptation in the most climate-vulnerable communities. The country that presents itself internationally as a champion of solar energy has one of the world's highest rates of coal use and is still expanding coal capacity.

The constitutional dimension of this international-domestic gap is that Indian citizens, including the most climate-vulnerable, have no constitutional mechanism to hold the government accountable for consistency between its international climate commitments and its domestic environmental governance. The democratic deficit in foreign policy that Part Eight identified as a structural problem of the Indian constitutional framework is particularly damaging in the climate context, because the international climate negotiations in which the Indian government participates have direct and significant consequences for the constitutional rights of Indian citizens, and those citizens have no meaningful constitutional role in shaping the positions their government takes.

CHAPTER NINE: TOWARD AN ECOLOGICAL CONSTITUTION FOR INDIA

9.1 The Philosophical Basis: From Anthropocentrism to Biocentrism

The most fundamental philosophical transformation that an ecological constitution for India must embody is the shift from an anthropocentric to a biocentric or ecocentric understanding of the relationship between human beings and the natural world.

The existing Constitution of India is, in its basic philosophical orientation, thoroughly anthropocentric. The rights it guarantees are human rights. The state it establishes is a human state, created by humans for human purposes. The natural world, to the extent it appears in the constitutional text, appears as an object of human duty and human interest: the state must protect the environment because doing so serves human welfare, not because the environment has any independent claim to constitutional protection. Even the most expansive readings of Article 21 that have incorporated environmental rights have justified those readings on anthropocentric grounds: the right to a clean environment is a human right because human beings need a clean environment to live well, not because the environment itself has rights that must be respected.

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This anthropocentrism has deep roots in the Western legal tradition from which the Indian Constitution drew its primary inspiration. The English common law, the Westminster constitutional tradition, the Enlightenment natural law theories that influenced American and European constitutionalism, these are all rooted in a philosophical tradition that places human beings at the center of the moral universe and treats the natural world as a resource for human use. The colonial administration of India, which shaped the legal and institutional inheritance that the framers of the Constitution worked within, was an enterprise of natural resource extraction, premised on the value of the natural world as raw material for human economic production.

But this anthropocentric inheritance is in tension with some of the deepest philosophical and spiritual traditions of India itself. The traditions of Hinduism, Buddhism, Jainism, and adivasi spirituality that have shaped the ecological consciousness of Indian civilization for thousands of years are all, in different ways, traditions of human embeddedness in the natural world rather than human dominion over it. The principle of ahimsa, non-violence toward all living beings, that is central to Jain philosophy and influential in the Gandhian constitutional tradition, implies a recognition of the moral status of non-human life that is fundamentally incompatible with the utilitarian anthropocentrism of the existing constitutional framework.

The constitutional philosophy of deep ecology, developed by the Norwegian philosopher Arne Naess and his successors, provides the most systematic philosophical framework for an ecocentric constitutional theory. Deep ecology holds that all living beings have inherent value independent of their utility to human beings, that the richness and diversity of life forms are valuable in themselves, and that human beings have no right to reduce this richness and diversity except to satisfy vital human needs. The constitutional implications of deep ecology are radical: they require a fundamental reorientation of the constitutional framework from one that treats nature as a resource to be managed for human benefit to one that treats nature as a subject of constitutional rights that must be protected for its own sake.

The biocentric theory of Paul Taylor, which grounds the moral considerability of living beings in the concept of a life that can go better or worse, provides a more modest but equally important philosophical framework. Taylor argues that every living being has a good of its own, a standard of flourishing appropriate to its kind, that gives it inherent worth and a claim to moral consideration. The constitutional implications of biocentrism are that the constitutional order must consider the good of non-human living beings in making decisions about the use of natural resources and the regulation of human activities that affect those beings.

India's philosophical traditions provide rich and sophisticated resources for the development of an ecocentric or biocentric constitutional theory that is genuinely rooted in Indian civilization rather than merely borrowed from Western environmental philosophy. The concept of Vasudhaiva Kutumbakam, the world is one family, which is deeply embedded in the Hindu philosophical tradition, implies a kinship between human beings and the rest of the living world that is incompatible with the instrumental use of nature as mere resource. The Jain concept of Paryushana, the celebration of the natural world and the practice of restraint in one's use of living resources, provides a spiritual framework for constitutional restraint in the exploitation of nature. The adivasi traditions of forest governance, in which the forest is understood as the living

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foundation of community life rather than as a commodity, provide practical models for the constitutional recognition of nature's rights that are rooted in the deepest traditions of Indian civilization.

9.2 The Specific Constitutional Provisions for an Ecological Constitution

The ecological constitution that India needs must include a set of specific constitutional provisions that transform the relationship between the constitutional order and the natural world from one of human dominion and instrumental use to one of constitutional partnership and mutual obligation.

The first required provision is a Fundamental Right to a Healthy Environment. This right must be placed in Part III of the Constitution, among the enforceable fundamental rights, not in Part IV among the non-justiciable directive principles. It must guarantee every person the right to a safe, clean, healthy, and sustainable environment. It must impose on the state a positive obligation to ensure that this right is respected, protected, and fulfilled for all citizens, with special attention to the rights of those communities that are most dependent on the environment for their livelihoods and most vulnerable to environmental harm. The right must be justiciable, meaning that citizens and communities can seek constitutional remedy from courts when the state fails to fulfill its environmental obligations.

The second required provision is the Constitutional Recognition of the Rights of Nature. The new constitution must recognize that nature, including rivers, forests, mountains, coastal ecosystems, and other significant natural features and systems, has constitutional rights of its own: the right to exist, to regenerate, to flourish, and to be represented in legal and governance processes. This recognition must be accompanied by institutional mechanisms for the representation of nature's rights, including the appointment of independent guardians for specific ecosystems, the establishment of a constitutional body with the mandate to represent the interests of the natural world in governance decisions, and the creation of legal standing for environmental organizations and affected communities to litigate on behalf of natural systems whose rights are threatened.

The third required provision is a Constitutional Framework for Climate Governance. The new constitution must explicitly address the climate crisis, recognizing that climate stability is a constitutional right, establishing the state's constitutional obligation to take climate action adequate to protect that right, requiring the government to develop and implement science-based emission reduction plans with constitutional status, creating independent institutional mechanisms for the oversight and enforcement of those plans, and establishing rights of action for citizens and civil society to seek constitutional remedy when the government's climate action is constitutionally inadequate.

The fourth required provision is a Constitutional Principle of Intergenerational Justice. The new constitution must recognize that future generations have interests that the current generation is constitutionally obligated to protect, establish an institutional mechanism for the representation of future generations in current governance processes, such as a Parliamentary Commissioner for Future Generations with constitutional status, and establish constitutional obligations of natural

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capital maintenance that require the current generation to transmit to future generations at least as rich a stock of environmental resources as it inherited.

The fifth required provision is a Constitutional Right to Environmental Democracy. The new constitution must guarantee the right of all citizens, and particularly those most affected by environmental decisions, to participate meaningfully in those decisions. This right must include the right to access environmental information held by the government and by corporations, the right to participate in environmental impact assessment processes in a genuinely meaningful way, the right to give or withhold free, prior, and informed consent to development activities that affect their communities and environments, and the right to seek constitutional remedy for violations of these procedural rights. The right to environmental democracy must be interpreted in the light of the principle of environmental justice, requiring that the participation rights it guarantees are effectively accessible to poor, rural, tribal, and otherwise marginalized communities and not merely to those with the resources to engage in formal legal and regulatory processes.

The sixth required provision is a Constitutional Prohibition of Ecocide. The new constitution must recognize that the large-scale, severe, or irreversible destruction of natural ecosystems is a constitutional crime, and must direct Parliament to enact legislation that criminalizes ecocide with penalties appropriate to the scale and severity of the crime. This provision must apply to both state and private actors, including the corporate and political decision-makers whose choices drive ecological destruction, and must provide for constitutional accountability that existing environmental regulation has been unable to deliver.

The seventh required provision is a Constitutional Framework for Forest Rights and Indigenous Environmental Governance. The new constitution must constitutionalize the rights of forest-dwelling and indigenous communities to governance authority over their traditional territories, including the right to give or withhold consent to the use of their territories for development purposes, the right to manage their territories according to their traditional knowledge and governance systems, and the right to constitutional protection against displacement without free, prior, and informed consent and without genuine and adequate resettlement.

The eighth required provision is a Constitutional Framework for Water Rights. The new constitution must recognize safe and adequate water as a constitutional right, establish a constitutional framework for the integrated management of water resources that addresses both surface and groundwater, requires inter-state cooperation on shared water bodies, protects the rights of downstream users and future generations, and prevents the privatization of water in ways that deprive citizens of their constitutional water rights.

9.3 Institutional Architecture for an Ecological Constitution

The constitutional provisions outlined above are necessary but not sufficient for genuine ecological constitutional governance. Constitutional provisions without adequate institutional architecture to enforce them will suffer the same fate as the existing constitutional environmental provisions: being declared progressive in text while being consistently violated in practice.

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The ecological constitution requires a set of constitutional institutions specifically designed to govern the relationship between the human constitutional order and the natural world. These institutions must be designed with the lessons of institutional failure that this textbook has documented throughout: independent of executive control, adequately resourced, transparently accountable, accessible to all citizens and not merely the privileged, and specifically mandated to represent the interests of the most vulnerable, both the most environmentally vulnerable communities of the present and the communities of the future.

The first required institution is an independent Constitutional Environmental Rights Commission, with the same constitutional status as the Election Commission. This Commission must have the mandate to monitor the government's compliance with its constitutional environmental obligations, to investigate environmental rights violations, to represent the interests of the natural world and of future generations in governance processes, to provide accessible and free legal assistance for environmental rights litigation, and to impose remedies for environmental rights violations. Its members must be appointed through an executive-independent process, must have security of tenure, and must include not only legal and scientific experts but representatives of tribal communities, environmental movements, and the communities most directly dependent on the natural environment.

The second required institution is a National Climate Accountability Council with constitutional status, mandated to independently assess the government's climate policies and actions against the constitutional requirements of climate rights and intergenerational justice. The Council must have the power to require the government to revise its climate plans if they are constitutionally inadequate, to publish its assessments publicly, to receive petitions from citizens and civil society, and to refer constitutional climate violations to the Supreme Court. Its scientific and policy assessments must be conducted on the basis of the best available climate science, not on the basis of governmental political preferences, and must be immune from political interference.

The third required institution is a system of Environmental Justice Tribunals at the district level, providing accessible and affordable environmental justice to communities that are too poor or too remote to access the National Green Tribunal or the High Courts. These Tribunals must be free at the point of access, must provide legal assistance to unrepresented parties, must be empowered to grant injunctive relief in cases of imminent environmental harm, and must operate under procedural rules that are adapted to the realities of environmental harm, including rules about burden of proof that recognize the information asymmetry between affected communities and the industrial and governmental interests that cause environmental harm.

CHAPTER TEN: THE POLITICAL ECONOMY OF ECOLOGICAL CONSTITUTIONAL REFORM AND THE DEMOCRATIC IMPERATIVE

10.1 Who Opposes Ecological Constitutional Reform and Why

The argument of this part of the textbook, that India needs an ecological constitution with genuine constitutional protection for environmental rights, the rights of nature, intergenerational

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justice, and environmental democracy, confronts a straightforward political problem: the forces that would most benefit from ecological constitutional reform are the politically weakest, and the forces that would most lose from it are the politically most powerful.

The communities that would benefit most from genuine constitutional environmental protection are tribal communities and forest dwellers whose lands are being taken for mining and infrastructure, fishing communities whose coastal ecosystems are being destroyed by industrial development, farming communities whose water supply is being depleted by groundwater overextraction and whose crops are being destroyed by climate disruption, urban poor communities whose health is being destroyed by industrial and vehicular air pollution, and the hundreds of millions of citizens who would benefit from a stable climate rather than the increasingly unstable climate that current policy trajectories are producing. These are all communities with limited political voice, limited access to the legal system, limited financial resources, and limited capacity to sustain the political pressure necessary to achieve constitutional reform.

The forces that would most lose from ecological constitutional reform are the mining industry, which would face constitutional constraints on its ability to clear forests and displace communities, the fossil fuel industry, which would face constitutional obligations to transition to clean energy that it currently lacks, the large industrial sector, which would face constitutional liability for environmental harm that it currently escapes through the inadequacy of environmental enforcement, and the political parties of all ideological hues, which benefit from the ability to direct environmental regulatory decisions in ways that serve their funding relationships with industrial interests. These are all forces with enormous financial resources, strong and concentrated political influence, and sophisticated legal and lobbying capabilities.

The history of constitutional environmental reform globally demonstrates that this structural imbalance between the beneficiaries and the opponents of reform is not unique to India, but it is particularly severe in India because of the specific features of the Indian constitutional order that this textbook has analyzed: the concentration of executive power, the inadequate independence of regulatory institutions, the weakness of civil society, the deep corruption of the political system, and the particular vulnerability of the communities who would most benefit from reform.

10.2 The Social Movements and the Constitutional Demand from Below

And yet the history of constitutional reform in India, and indeed globally, also demonstrates that the structural imbalance between the beneficiaries and opponents of reform can be overcome when the beneficiaries are able to organize effectively, to build coalitions with other social forces, to develop compelling constitutional arguments, and to create the kind of sustained political pressure that makes reform politically necessary for those in power.

The history of environmental social movements in India is a history of remarkable resistance and remarkable achievement against structural odds. The Chipko movement of the 1970s and 1980s, in which communities in the Uttarakhand hills literally embraced trees to prevent their felling, influenced the national forest policy and contributed to the shift in constitutional discourse that produced the Forty-Second Amendment's environmental provisions. The Narmada Bachao

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Andolan, the movement to protect the communities and ecosystems of the Narmada river from large dam construction, was one of the most sustained and sophisticated social movements in post-independence Indian history, and while it did not ultimately prevent the construction of the Sardar Sarovar Dam, it fundamentally changed the constitutional and legal framework for displacement and resettlement and established the principle that no large project can proceed without genuine consent of affected communities.

The more recent movements against the land acquisition ordinance, the movements of fishing communities against coastal development, the movements of tribal communities against forest clearances for mining, the climate justice movement that has been growing among young Indians since the global Fridays for Future mobilization, the farmers' movements that have engaged with questions of climate change and water security alongside their primary economic concerns, these are all expressions of a constitutional demand from below: a demand for a constitutional order that takes seriously the environmental rights and interests of the majority of Indian citizens rather than the economic interests of a powerful minority.

The constitutional significance of these movements goes beyond their specific policy demands. They are articulating, in their various ways, a constitutional vision that is more consistent with the actual traditions, values, and needs of Indian civilization than the colonial-industrial framework that the existing constitution largely embodies. The adivasi forest community asserting its right to give or withhold consent to the use of its traditional territory is articulating a constitutional principle of community sovereignty over environmental resources that is both constitutionally valid and ecologically necessary. The fishing community resisting the destruction of its coastal ecosystem is articulating a constitutional principle of livelihood rights that is both constitutionally grounded in Article 21 and ecologically sound. The climate activist demanding that the state take its constitutional obligations to current and future citizens seriously is articulating a constitutional principle of state accountability that is both constitutionally required and politically necessary.

10.3 The Democratic Constituent Process and Environmental Inclusion

The creation of an ecological constitution for India requires not merely a new set of constitutional provisions but a genuinely democratic constituent process in which the voices of those who have been most harmed by ecological destruction and most excluded from constitutional governance are central rather than peripheral.

The existing Constitution was drafted by an indirectly elected assembly that was dominated by educated, urban, professional, upper-caste men. The environmental communities, the tribal forest dwellers, the coastal fishing communities, the farming communities of the water-stressed hinterland, were not represented in any meaningful way in that assembly. The constitutional provisions that emerged, including the non-justiciable environmental directive principles, reflected the priorities of those who were represented rather than those who were not.

A new constituent process must be explicitly designed to include these excluded voices. It must create mechanisms for the participation of tribal communities, fishing communities, farming communities, urban poor communities, and other environmentally vulnerable groups in the

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deliberation about the constitutional framework for environmental governance. It must ensure that the knowledge systems that these communities bring to environmental governance, their traditional ecological knowledge, their long-term experience of living in specific ecosystems, their deeply grounded understanding of the consequences of environmental degradation, are recognized as constitutional inputs rather than merely cultural information. It must ensure that the constitutional provisions that emerge from the process are genuinely responsive to the needs and aspirations of the most environmentally vulnerable rather than to the interests of those whose economic position insulates them from the most severe environmental consequences.

The design of an inclusively environmental constituent process requires attention to the same barriers to participation that this textbook has identified in other contexts: geographic remoteness, language, literacy, economic dependence, and the power differentials that make genuinely free participation difficult for those who are economically dependent on the very systems they are being asked to critique. Overcoming these barriers requires deliberate design, including the provision of legal and technical assistance to communities participating in the constituent process, the conduct of deliberative assemblies in local languages in local settings rather than in national capitals in national languages, the development of participatory methods that allow communities to articulate their environmental values and priorities in forms that can inform constitutional drafting, and the explicit weighting of the process to ensure that the voices of the most excluded are not drowned out by the voices of those who are better resourced and better organized.

10.4 The Urgency of the Ecological Constitutional Moment

The argument for ecological constitutional reform in India is not merely a long-term desideratum. It is an urgent constitutional necessity driven by the accelerating pace of ecological crisis and the catastrophic consequences of delay.

The climate science is unambiguous: every year of delay in adequate climate action adds to the stock of greenhouse gases in the atmosphere, moves the climate further from the stable conditions that have supported human civilization for ten thousand years, and imposes increasing costs on current and future generations that can no longer be avoided but can still be reduced by faster action. The biodiversity science is equally unambiguous: species are going extinct at rates that have not been seen since the mass extinctions of the geological past, and the ecosystems that lose species lose functionality in ways that reduce their capacity to provide the services, clean water, pollination, climate regulation, disease control, that human life depends on.

The communities that are currently experiencing the worst consequences of ecological destruction, the tribal communities being dispossessed for mining, the farming communities whose crops are failing because of climate disruption, the coastal communities whose livelihoods are being destroyed by sea level rise and ecosystem degradation, cannot wait for a long-term process of constitutional reform that may take decades to complete. They need constitutional protection now.

The ecological constitutional reform agenda must therefore be pursued on two tracks simultaneously. On the first track, the long-term track of comprehensive constitutional

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reconstruction, the case must be made for a new constitution that places ecological rights and environmental democracy at its center, and the political organizing necessary to achieve that reconstruction must proceed. On the second track, the immediate and achievable track of legislative and judicial reform, the specific improvements to the existing framework that can be made within the existing constitutional structure must be pursued urgently: strengthening the NGT's independence and resources, strengthening the Forest Rights Act's implementation, strengthening the environmental clearance process, strengthening the rights of tribal communities to environmental governance, strengthening the constitutional accountability of the government for its climate commitments.

These two tracks are not in tension. The immediate reforms make the situation of the most vulnerable less desperate while the longer-term constitutional reconstruction is being achieved. The achievement of the immediate reforms builds the political confidence and organizational capacity of the environmental movement that is necessary to achieve the longer-term constitutional transformation. And the constitutional transformation, when it comes, creates a foundation that makes the immediate reforms durable rather than vulnerable to the political reversals that have repeatedly undermined environmental governance in the existing constitutional framework.

CHAPTER ELEVEN: COMPARATIVE CONSTITUTIONAL ENVIRONMENTAL LAW AND THE LESSONS FOR INDIA

11.1 The Global Constitutional Environmental Rights Movement

The constitutional recognition of environmental rights has been one of the most significant developments in comparative constitutional law of the past half century. The global movement to constitutionalize environmental protection reflects a growing recognition, across diverse constitutional systems and across the full ideological spectrum of democratic politics, that the existing legal framework for environmental governance is insufficient to address the ecological crisis and that constitutional change is necessary.

As of 2026, more than 155 countries have incorporated some form of environmental protection into their constitutions, either as a fundamental right, as a state duty, as a constitutional principle, or as a combination of these approaches. The content of constitutional environmental provisions varies enormously, from the vague and aspirational to the specific and justiciable, from the anthropocentric (protecting human rights to a clean environment) to the ecocentric (recognizing the rights of nature itself). The quality of constitutional environmental governance in a given country depends not only on the text of its constitutional provisions but on the institutional framework for enforcement, the quality of the judiciary and the independence of environmental regulatory institutions, the strength of civil society and the environmental movement, and the political culture's receptivity to environmental claims.

The experience of several constitutional systems is particularly instructive for the Indian context.

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Ecuador's constitutional framework, established by the 2008 Constitution under the leadership of Rafael Correa, is the most far-reaching example of ecocentric constitutionalism in the world. The Constitution of Ecuador gives Pachamama constitutional rights including the right to an integral respect for its existence and the maintenance and regeneration of its life cycles, structure, functions, and evolutionary processes. Every person, people, community, or nationality has the right to benefit from the environment and from natural wealth, and the state has the duty to encourage individuals and collectives to protect nature and to promote respect for all elements of the natural world. The Ecuadorian constitutional framework has been used in litigation before Ecuadorian courts to protect specific ecosystems and has influenced the development of rights of nature jurisprudence globally.

The South African Constitution, whose Bill of Rights includes in Section 24 the right of every person to an environment that is not harmful to their health or well-being and to have the environment protected for the benefit of present and future generations through reasonable legislative and other measures, represents a strongly anthropocentric but justiciable approach to constitutional environmental rights. The South African Constitutional Court has developed a sophisticated jurisprudence under Section 24, requiring the state to take reasonable measures to protect the environment and holding government agencies accountable for environmental regulatory failures that harm citizens' constitutional rights.

Germany's constitutional environmental framework, based on the constitutional protection of natural resources as a state duty under Article 20a of the Basic Law, has been significantly developed by the Federal Constitutional Court in the climate cases beginning with the Neubauer decision of 2021. The Court's holding that the Basic Law's protection of fundamental rights for future generations requires adequate climate action, and that legislation that defers the costs of climate action to future generations violates their constitutional freedom rights, represents the most sophisticated constitutional treatment of intergenerational climate justice that any court has produced to date.

11.2 The New Zealand Te Awa Tupua Model and Its Applicability to India

The New Zealand model of river legal personhood, established by the Te Awa Tupua (Whanganui River Claims Settlement) Act of 2017, is particularly relevant to India because it combines legal innovation with cultural grounding in indigenous ecological philosophy in a way that resonates with India's own indigenous traditions.

The Te Awa Tupua Act recognizes the Whanganui River as an indivisible and living whole, from the mountains to the sea, incorporating its physical and metaphysical elements. This recognition is grounded in the Maori understanding of the river as an ancestor, as a living entity with which the Maori people have a relationship of mutual obligation. The Act establishes a governance structure in which two guardians, one appointed by the Maori and one by the Crown, act as the human face of the river, representing its interests in legal and governance processes.

The applicability of this model to India is significant for several reasons. First, India's indigenous communities have rich traditions of understanding rivers, forests, and other natural features as living entities with inherent dignity, traditions that parallel the Maori understanding of the

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Whanganui. The Dongria Kondh's understanding of the Niyamgiri Hills as sacred, the adivasi traditions of forest governance that understand the forest as a living community of which humans are members, the Hindu traditions of river worship that express a relationship of reverence and mutual obligation between humans and rivers, these provide cultural foundations for constitutional rights of nature that are deeply rooted in Indian civilization.

Second, the Te Awa Tupua model demonstrates that rights of nature can be made practically operational through careful institutional design. The establishment of Te Pou Tupua as the human face of the river, with specific powers and obligations to represent the river's interests, addresses the practical challenge of giving legal effect to nature's constitutional rights without creating the absurdity of a river being sued for flooding a town. The model provides a precedent that could be adapted for the constitutional recognition of rights for specific Indian rivers, forests, and ecosystems.

Third, the Te Awa Tupua Act is a product of a negotiated settlement between indigenous peoples and the colonial state, recognizing the historical injustice of the colonial dispossession of indigenous relationships with land and water. This settlement dimension is directly relevant to the Indian context, where the constitutional recognition of indigenous communities' relationships with their traditional territories and natural environments is both a matter of justice for historical wrongs and a practical necessity for effective ecological governance.

11.3 Colombia's Environmental Constitutional Jurisprudence

The Supreme Court of Colombia's judgment in the Future Generations versus Colombia case of 2018, in which the Court recognized the Colombian Amazon as a subject of rights, is another important comparative precedent for Indian environmental constitutionalism. The case was brought by twenty-five young Colombians against the national and local governments, arguing that the Colombian Amazon's destruction through deforestation violated their fundamental rights to life, health, food, and water, and their rights as part of the current and future generations to an environment capable of sustaining life.

The Colombian Supreme Court granted the Amazon the status of a subject of rights, entitled to protection, conservation, maintenance, and restoration. It held that the future generation of Colombians has constitutional rights to an environment that can support their life and dignity. And it ordered the government to design an action plan, developed in consultation with affected communities, to reduce deforestation in the Amazon to zero and to implement plans for the protection of the climate, biodiversity, and ecosystem services of the region.

The Colombian decision is particularly significant for its integration of the rights of nature and the rights of future generations within the constitutional framework of existing fundamental rights. It demonstrates that a constitutional court can recognize both the Amazon and future generations as constitutional rights-holders without requiring the addition of explicit constitutional provisions, though the Colombian Constitution's environmental provisions are stronger than India's. This provides a model for how Indian courts might extend the constitutional reasoning of the Ranjitsinh judgment in the direction of rights of nature and intergenerational constitutional rights.

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CHAPTER TWELVE: THE CONSTITUTIONAL GOVERNANCE OF INDIA'S SPECIFIC ECOLOGICAL CRISES

12.1 The Himalayan Glacier Crisis and Constitutional Water Security

The Himalayan glaciers are India's water towers. They store water in frozen form during the winter and release it as melt water in the spring and summer, feeding the rivers of the Indus, the Ganga, and the Brahmaputra river systems that provide irrigation and drinking water for hundreds of millions of people in India and in neighboring Pakistan, Bangladesh, Nepal, and Bhutan. The glaciers are retreating at rates that have accelerated significantly in the twenty-first century due to global warming, and the long-term consequences for water security in the downstream regions are severe.

The constitutional framework for governing the Himalayan glacier crisis is entirely inadequate. There is no constitutional or statutory framework for the management of cryosphere resources, no constitutional recognition of the rights of downstream communities to the water security that functioning glaciers provide, no constitutional framework for the inter-state and international cooperation necessary to manage the consequences of glacier retreat, and no constitutional mechanism for holding either the Indian government or the global community of states that bear the primary responsibility for the greenhouse gas emissions driving glacier retreat accountable for the water security consequences.

The constitutional reform necessary for Himalayan glacier governance requires, at minimum, a constitutional recognition of the right to water security as a fundamental right, a constitutional framework for the management of shared water resources that addresses both the domestic inter-state dimension and the international dimension of transboundary water systems, a constitutional obligation for the government to develop and implement plans for adapting to glacier retreat that prioritize the most vulnerable downstream communities, and a constitutional mechanism for holding the government accountable for compliance with these obligations.

More fundamentally, the glacier crisis is a constitutional argument for climate action: if glacier retreat threatens the water security of hundreds of millions of Indians, and if glacier retreat is driven primarily by greenhouse gas emissions, then adequate climate action is constitutionally required to protect the constitutional right to water security of those hundreds of millions. This constitutional argument, if developed in the framework of a new constitution that explicitly recognizes climate rights and intergenerational justice, could provide the constitutional basis for holding the government accountable for the pace and ambition of its climate action in a way that the existing framework cannot.

12.2 The Air Pollution Crisis and Constitutional Failure

The air quality crisis in India's cities is a constitutional crisis of the first magnitude that has received extensive judicial attention but has not, despite decades of Supreme Court and NGT orders, been adequately addressed. The air quality of Delhi, which regularly ranks among the

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worst in the world during the winter months, is a product of multiple sources: vehicular emissions, industrial pollution, stubble burning in Punjab and Haryana, construction dust, and coal-based power generation in the surrounding regions. The health consequences are devastating: the World Health Organization estimates that air pollution is responsible for approximately 1.6 million premature deaths in India annually, making it one of the country's leading causes of preventable death.

The constitutional right to life under Article 21, as the Supreme Court has held, includes the right to a pollution-free atmosphere. This constitutional right is being violated on a massive scale, every day, for hundreds of millions of Indians who breathe air that exceeds safe levels of particulate matter, nitrogen oxides, and other pollutants. The violation is most severe for the poor and the homeless, who spend more time outdoors and who live in the areas of highest pollution concentration, near highways, near industrial areas, near garbage burning sites, and in the urban slums where cooking fires add to the indoor pollution burden that is itself a major contributor to respiratory disease.

The constitutional failure in air quality governance is not primarily a failure of judicial engagement. The Supreme Court has been extraordinarily active in issuing directions about air quality: the Graded Response Action Plan, the restrictions on diesel vehicles, the real-time monitoring requirements, the odd-even scheme in Delhi, all emerged from the judicial enforcement of constitutional air quality rights. The failure is in implementation, and the failure of implementation reflects the constitutional framework's inability to create the institutional independence, the fiscal resources, the political will, and the democratic accountability that genuine air quality governance requires.

12.3 The Sacred Groves and Indigenous Conservation Systems: Constitutional Recognition of Traditional Ecological Governance

India has a rich tradition of community-based ecological conservation embodied in the institution of sacred groves, known by various names across the country: Dev vans in Uttarakhand, Orans in Rajasthan, Kovils in Tamil Nadu, Sarnas in the adivasi areas of Jharkhand. Sacred groves are patches of natural vegetation, typically forests, that are protected by community religious and cultural traditions from any human exploitation. They serve as repositories of biodiversity, as seed banks for surrounding agricultural areas, as water sources, and as living connections to the deep ecological traditions of Indian civilization.

The constitutional and legal status of sacred groves in India is deeply uncertain. They are not covered by any specific national legislation. Their protection depends entirely on the continued vitality of the community traditions that sustain them, and those traditions are under pressure from the same forces that are driving ecological destruction more broadly: the penetration of market economy into rural areas, the weakening of community institutions, the out-migration of younger generations, and the assertion of state authority over land and forests in ways that ignore or override community governance systems.

The constitutional recognition of sacred groves and of the community governance traditions that protect them would be a powerful symbol of the new ecological constitution's commitment to the

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integration of traditional ecological knowledge with constitutional environmental protection. It would also serve a practical governance function: the millions of hectares of forest and other vegetation protected by sacred grove traditions represent an existing and proven system of community-based conservation that the constitutional order should support rather than undermine.

More broadly, the constitutional recognition of indigenous and traditional ecological governance systems is a necessary component of the ecological constitution. The adivasi communities of India's forests have, over generations of co-evolution with specific ecosystems, developed governance systems for the sustainable management of forests, water, and other natural resources that embody knowledge and values of enormous ecological and constitutional significance. The constitutional framework must recognize these systems not merely as cultural heritage to be preserved but as governance authority to be constitutionally empowered.

CHAPTER THIRTEEN: JURISPRUDENTIAL AND THEORETICAL FRAMEWORKS FOR ECOLOGICAL CONSTITUTIONALISM

13.1 Environmental Legal Theory and the Critique of Property Rights

The deepest theoretical challenge to ecological constitutionalism is the relationship between constitutional environmental rights and the constitutional and legal framework of property rights. The right to use property, including land, water, and other natural resources, to exploit their commercial value, and to exclude others from their use, has been a central feature of constitutional and legal systems since the beginning of the modern constitutional era. The legal regime of private property rights has been the primary mechanism through which natural resources have been allocated and used, with consequences for ecological degradation that are now among the most pressing constitutional concerns of the twenty-first century.

The classical liberal constitutional theory of property rights, rooted in Locke's labor theory of property and developed by Blackstone, Madison, and the common law tradition, treats property rights as fundamental to personal liberty: the right to own property is the right to be secure in the fruits of one's labor and to be protected against arbitrary state expropriation. This theory has constitutional expression in the various provisions for the protection of property rights in constitutional systems globally, including, as Part Four of this textbook discussed, the original right to property in the Indian Constitution and its complex subsequent history.

The ecological critique of liberal property rights theory is that the classical framework, which treats property as an exclusive private entitlement to use and dispose of one's resources, fails to account for the externalities of private resource use that are imposed on others, on the community, on the non-human world, and on future generations. When a mining company uses its property rights to extract coal from a forest, it imposes costs on the communities displaced, on the forest ecosystem destroyed, on the atmosphere that receives the greenhouse gas emissions from the coal's combustion, and on the future generations who will inherit a more disrupted

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climate. These external costs are not captured by the market price of coal and are not reflected in the constitutional framework that protects the mining company's property rights.

The jurisprudence of the public trust doctrine, as developed in Indian and comparative environmental law, provides one constitutional mechanism for limiting property rights in the public environmental interest. But the public trust doctrine as currently developed is insufficient to address the full scale of the ecological crisis, because it applies primarily to a limited class of resources traditionally held in common and does not provide a constitutional framework for the internalization of the full environmental costs of private resource use.

A more comprehensive theoretical framework is provided by ecological economics and by the work of theorists such as Karl Polanyi and Herman Daly, who have argued that the market economy's treatment of nature as a free input into production is a fundamental category error that has produced the ecological crisis now confronting humanity. Daly's concept of a steady-state economy, one that lives within the ecological limits of the biosphere rather than seeking unlimited growth through the unlimited exploitation of natural resources, provides an economic framework for ecological constitutionalism that requires the constitutional limitation of economic activity to a scale compatible with the long-term health of the ecosystems on which all economic activity depends.

The constitutional implications of ecological economic theory are far-reaching. A constitution genuinely committed to ecological sustainability must not merely protect the environment from the worst abuses of private industry but must establish a constitutional framework for economic governance that treats ecological limits as binding constitutional constraints rather than as externalities to be managed after the fact. This requires constitutional provisions for the prohibition of economic activities whose ecological costs exceed their social benefits, for the internalization of ecological costs through constitutional environmental levies and taxes, for the constitutional protection of natural capital as a common inheritance of all citizens, and for the constitutional accountability of the state for economic policies that are ecologically destructive.

13.2 The Public Trust Doctrine and Its Expansion

The Public Trust Doctrine, as adapted and applied in Indian constitutional law by the Supreme Court in the M.C. Mehta versus Kamal Nath case of 1997, holds that the state holds certain natural resources, particularly water, air, and forests, in trust for the benefit of the public. The doctrine has its origins in Roman law, in the common law tradition, and in American environmental law as developed by the scholar Joseph Sax, and it was imported into Indian constitutional jurisprudence as a mechanism for limiting the state's power to alienate or degrade resources that are necessary for the public welfare.

The Public Trust Doctrine in its current Indian form has significant limitations. It has been applied primarily to specific categories of resources and specific categories of state action, and the courts have not developed it into a comprehensive constitutional framework for environmental governance. It has been used to invalidate specific instances of state action that violate trust obligations, but it has not been used to establish positive constitutional obligations for the protection and restoration of natural resources.

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The expansion of the Public Trust Doctrine in the framework of a new ecological constitution offers a powerful constitutional tool for environmental governance. If the doctrine is constitutionally entrenched and expanded to cover all natural resources, if it is interpreted to impose positive obligations on the state to protect and restore the natural systems it holds in trust, if it is extended to future generations as beneficiaries of the trust, and if it is made enforceable by any citizen or community with an interest in the trust assets, it provides a constitutional basis for a comprehensive framework of ecological rights and obligations.

The philosophical grounding of an expanded Public Trust Doctrine for an ecological constitution is provided by the concept of environmental stewardship: the idea that the current generation holds the natural world not as owners but as trustees, with obligations to both the other beneficiaries of the trust in the present, including marginalized communities who depend most directly on natural resources, and the beneficiaries in the future, who will inherit the consequences of the current generation's use of the trust assets.

13.3 Critical Environmental Legal Studies and the Constitutional Challenge

The critical legal studies tradition, which this textbook has drawn upon in its analysis of the constitutional order throughout, provides important theoretical resources for the ecological constitutional critique. Critical environmental law scholars, including the work of Andreas Fischer-Lescano, Gunther Teubner, Ugo Mattei, and Steffen Bohm, have argued that the dominant framework of environmental law, in which nature is protected through the extension of property rights concepts to environmental resources, through the internalization of external costs through market mechanisms, and through the administrative regulation of specific activities by specific industries, is fundamentally inadequate to the ecological crisis because it addresses the symptoms rather than the structural causes of ecological destruction.

The structural causes, in the critical environmental law analysis, are the same structural causes that this textbook has identified throughout its examination of the Indian constitutional order: the concentration of political and economic power in the hands of those whose short-term interests are served by ecological exploitation, the exclusion of the most vulnerable from the political and legal processes that determine environmental outcomes, the capture of regulatory institutions by the industries they regulate, and the constitutional insulation of executive economic policy from democratic and ecological accountability.

The critical environmental legal studies tradition argues that ecological constitutional reform must therefore address these structural causes rather than merely adding new rights provisions to an unreformed constitutional order. A constitutional right to a clean environment that is enforced by the same captured regulatory institutions, adjudicated by the same expensive and inaccessible legal system, and subject to override by the same concentrated executive power that has produced the ecological crisis in the first place, will not produce different environmental outcomes than the non-justiciable Directive Principles and Article 21 readings that already exist.

This analysis supports the argument of this part of the textbook for comprehensive constitutional reconstruction rather than mere amendment: the ecological constitution that India needs is not an addition to the existing constitutional framework but a transformation of the fundamental

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architecture of constitutional power in ways that make genuine ecological governance constitutionally possible.

CHAPTER FOURTEEN: CONTROVERSIES, RECENT DEVELOPMENTS, AND THE CONTEMPORARY ECOLOGICAL CONSTITUTIONAL MOMENT

14.1 The Great Indian Bustard Case and the Renewable Energy-Conservation Conflict

The Supreme Court's engagement with the Great Indian Bustard case, from which the Ranjitsinh judgment emerged, illustrates the deep and constitutionally difficult conflict between India's renewable energy ambitions and its biodiversity conservation obligations. The conflict is not a false one: India genuinely needs to expand renewable energy capacity rapidly to meet both its development needs and its climate commitments, and the Thar Desert of Rajasthan, which the Great Indian Bustard inhabits, is one of India's most promising areas for large-scale solar and wind energy development.

But the expansion of renewable energy infrastructure in the Great Indian Bustard's habitat has caused, and if unconstrained will continue to cause, the decline and possible extinction of a species that is already critically endangered, with fewer than 150 individuals estimated to survive in the wild. The conflict is therefore a conflict between two constitutional goods: the right to clean energy and the consequent right of current and future generations to be free from the worst effects of climate change on the one hand, and the constitutional duty to protect wildlife and biodiversity on the other.

The Supreme Court's approach to this conflict in the Ranjitsinh judgment was to insist on a case-by-case balancing rather than to establish a constitutional principle that would govern the conflict systematically. The Court directed that overhead power lines in the Great Indian Bustard's critical habitat be placed underground, that an expert committee assess the feasibility of this direction, and that the government develop a recovery plan for the species that is consistent with the state's renewable energy obligations. This is a careful and pragmatic approach, but it does not resolve the constitutional question of how the conflict between renewable energy development and biodiversity conservation should be resolved when they genuinely cannot both be fully achieved.

The constitutional resolution of this conflict requires a framework that is both principled and practical. The principle must be that biodiversity conservation and renewable energy development are both constitutional obligations, that neither can be treated as an unconditional override of the other, and that the state has an obligation to find solutions that maximize both objectives rather than simply sacrificing one for the other. The practical dimension requires the kind of advance planning, landscape-scale assessment, and technology investment that the government's current case-by-case approach does not provide.

14.2 The EIA Notification and the Ongoing Battle for Environmental Due Process

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The ongoing conflict over the Environmental Impact Assessment framework, which has produced multiple attempts by successive governments to weaken public participation and environmental scrutiny requirements, and multiple rounds of judicial and civil society resistance to those attempts, is one of the most important ongoing constitutional battles in Indian environmental governance.

The EIA notification controversy illustrates a fundamental truth about constitutional environmental governance: the constitutional framework for environmental protection is not self-executing. It requires ongoing political effort to maintain, because the forces that seek to weaken environmental safeguards for the benefit of industrial development are permanently organized, permanently resourced, and permanently attentive to opportunities to shift the regulatory framework in their favor. The environmental movement and the communities it represents must be equally permanent, equally organized, and equally attentive to these opportunities, and the constitutional framework must be designed to support their vigilance rather than to leave the protection of environmental rights dependent on it.

The response to the 2020 Draft EIA Notification, which mobilized over two million public comments and engaged civil society organizations, lawyers, scientists, academic institutions, and communities across the country, demonstrated that this vigilance exists in India and is capable of effective constitutional action. But the scale and sustained effort of the mobilization required to defeat a single regulatory notification suggests that the constitutional framework places too much of the burden of environmental protection on civic resistance to executive rollback rather than on institutional design that makes rollback structurally difficult.

An ecological constitution that places environmental rights among the fundamental rights, that establishes independent environmental governance institutions with constitutional status, and that requires that any weakening of environmental standards be subjected to constitutional scrutiny by an independent body, would shift the structural balance in favor of environmental protection in a way that does not depend on mobilizing two million public comments every time a government wishes to weaken an environmental regulation.

14.3 The Climate Litigation Wave and Its Constitutional Implications

The wave of climate litigation that has been developing globally since the Urgenda case and that has been accelerating in India since the Ranjitsinh judgment represents a new constitutional dynamic in Indian environmental governance. Citizens, civil society organizations, and affected communities are increasingly turning to the courts to hold the government accountable for its climate commitments and to seek constitutional remedy for climate-related harm.

The constitutional implications of this litigation wave are significant and complex. On the positive side, climate litigation is developing the constitutional doctrine of climate rights, building a body of judicial precedent that can inform constitutional reform, and creating accountability mechanisms for government climate action that the political system alone cannot provide. The Ridhima Pandey case, now engaging eight central ministries in a constitutional deliberation about the adequacy of India's climate governance framework, is potentially the most important constitutional climate case in Indian history.

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On the challenging side, the limitations of judicial institutions as instruments of systemic climate governance, documented in Chapter Two of this part, mean that climate litigation can make an important contribution to constitutional climate accountability but cannot, on its own, deliver the comprehensive constitutional transformation that adequate climate governance requires. The courts can identify constitutional violations. They can direct the government to revise inadequate policies. They can provide remedies for specific instances of climate-related harm. But they cannot redesign the constitutional framework for executive accountability, cannot create the institutional independence of environmental governance that structural capture prevents, and cannot resolve the political economy that makes adequate climate action constitutionally necessary but politically difficult.

The constitutional reform agenda must therefore be pursued simultaneously in the courts, through the development of constitutional climate doctrine, and in the broader political arena, through the development of the social and political movements that can achieve the constitutional reconstruction necessary for genuinely adequate ecological governance.

CONCLUSION TO PART SIXTEEN: THE EARTH AS CONSTITUTIONAL SUBJECT

The constitutional order of India was written in the waning years of one era of civilizational confidence: the era of industrial modernity that believed in the unlimited capacity of human intelligence and human enterprise to master the natural world for human benefit. That confidence, which produced genuine achievements of material welfare alongside unprecedented ecological destruction, is no longer sustainable. The twenty-first century has confronted humanity, and India in particular, with the consequences of treating the natural world as a resource to be exploited without limit: a destabilized climate, a depleted biosphere, poisoned air and water, and the growing recognition that the conditions for human civilization and human dignity depend on the health of the ecological systems that the previous century treated with such cavalier indifference.

The Constitution of India, a product of that era of industrial modernity and colonial administrative inheritance, reflects its philosophical origins in its treatment of the environment: as a concern of state duty and social policy rather than as a constitutional subject in its own right, as a matter of human interest rather than of intrinsic ecological value, as a domain of non-justiciable aspiration rather than of enforceable constitutional right. The result, across seven decades of constitutional governance, has been an environmental catastrophe: a country of extraordinary ecological wealth that has allowed that wealth to be systematically destroyed in the name of development, whose rivers are dying, whose forests are shrinking, whose air is poisonous, whose glaciers are retreating, and whose most ecologically dependent communities are among the most systematically victimized by the constitutional order.

The ecological constitution that India needs is not a supplement to the existing constitutional order. It is a transformation of the constitutional order's fundamental relationship with the natural world: a transformation from dominion to partnership, from exploitation to stewardship, from

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anthropocentrism to biocentrism, from the constitutional silence of the existing framework to the constitutional recognition that the earth itself is a subject of constitutional protection.

This transformation is simultaneously a necessity and an opportunity. It is a necessity because the ecological crisis will not wait for gradual reform: the pace of climate change, biodiversity loss, and ecological degradation is such that constitutional indifference will have catastrophic consequences for the current generation of Indians and civilizational consequences for future generations. It is an opportunity because the ecological crisis, and the social movements it is generating, creates a constitutional moment in which the transformative constitutional imagination of India's deepest traditions can find expression in a new constitutional order: one that honors the wisdom of communities that have lived in partnership with specific ecosystems for generations, that recognizes the intrinsic value of the diversity of life, and that takes seriously the constitutional obligation of the current generation to transmit to the future a world in which human dignity and ecological health are both possible.

The Preamble of the existing Constitution of India speaks of justice, liberty, equality, and fraternity as the constitutional aspirations of the republic. These aspirations are real and important, and this textbook has documented in fifteen previous parts how the existing constitutional order has failed to deliver on them. A new constitutional Preamble for an ecological India must add to these aspirations the aspiration of sustainability: the commitment to live in a way that is sustainable within the ecological limits of the living world, that is just to the non-human life that shares the planet with us, and that is equitable to the future generations who will inherit the consequences of our choices.

Justice for the living. Liberty for all beings. Equality across generations. Fraternity with the community of life. And sustainability as the constitutional commitment that makes all of these possible.

That is the ecological constitutional vision. That is the urgent constitutional work of this historical moment.

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End of Part Sixteen.

Part Seventeen will examine the constitutional dimensions of social media, political communication, and the manufactured consent of democratic societies, developing the argument for constitutional provisions that address the crisis of democratic discourse in the age of algorithmic manipulation, information warfare, and the capture of the public sphere by a combination of state propaganda and corporate platform power.

This part of the textbook was researched and written with reference to the most current developments in Indian constitutional law, environmental jurisprudence, climate governance, and ecological constitutional theory as of April 2026. The legal and political landscape in this field is changing rapidly, and readers are encouraged to consult the most recent decisions of the Supreme Court and the National Green Tribunal, the most recent reports of the Ministry of Environment and climate scientific bodies, and the most recent scholarship in the field of environmental constitutional law for developments that may have occurred after the research cutoff for this text.

PART SEVENTEEN: THE MANUFACTURED REPUBLIC

Democratic Discourse, Algorithmic Authoritarianism, Social Media, Information Warfare, and the Constitutional Crisis of the Public Sphere

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PREFACE TO PART SEVENTEEN

The sixteen previous Parts of this textbook have traced the anatomy of a constitutional order that was born in colonial inheritance, matured in structural contradiction, and has aged into institutional dysfunction. We have examined the architecture of concentrated power, the electoral machinery of subjugation, the judiciary as simultaneously champion and betrayer of constitutional rights, the weaponization of criminal law, the hollowing of federalism, the corruption of democratic institutions, the systematic victimization of the poor, the displacement of adivasis, the persecution of minorities, the foreign policy catastrophe produced by an executive without constitutional accountability, the ecological destruction enabled by a constitution that treats nature as resource rather than subject, and the deepening crisis of democratic legitimacy that runs through every dimension of constitutional governance in India.

All of these analyses have assumed, at least implicitly, that the political and social world in which the Indian Constitution operates is a world in which citizens have access, however constrained by class and power, to information about their own governance, to discourse about constitutional questions, and to the minimal communicative conditions necessary for democratic deliberation. A citizen who cannot speak freely, who cannot access true information, who cannot

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distinguish between political communication and political manipulation, who lives in an information environment designed not to inform but to inflame, is not merely a citizen whose formal constitutional rights are inadequate. She is a citizen for whom the very precondition of constitutional democracy, the communicatively rational public sphere that Jurgen Habermas identified as the foundation of democratic legitimacy, has been destroyed.

Part Seventeen argues that the most profound constitutional crisis facing India in 2025 and 2026 is not merely the crisis of institutions, though that crisis is severe. It is the crisis of the democratic public sphere itself: the collapse of the communicative conditions under which democratic deliberation is possible, produced by the combined effect of the algorithmic manipulation of social media platforms, the state capture of broadcast media, the weaponization of information as a tool of authoritarian governance, the monetization of outrage and polarization by technology corporations, and the constitutional framework's complete failure to address any of these challenges.

The argument developed across this Part is this: the Constitution of India, drafted in 1950, contains no provisions adequate to govern the information environment of 2025. It protects freedom of speech in a world of printing presses and public meetings. It fails to address the reality of a world in which the dominant modes of political communication are digital platforms whose algorithms are optimized not for the promotion of democratic deliberation but for the maximization of engagement, where engagement is most reliably produced by content that generates fear, anger, outrage, and tribal solidarity. It fails to address a world in which the state has discovered that it is more effective to manage public opinion through coordinated inauthentic behavior, through the deployment of troll farms and IT cells and algorithmic amplification, than through the blunt censorship that Article 19(2) restricts. It fails to address a world in which the distinction between public discourse and state propaganda has been systematically erased, in which the ruling party's social media operation and the state broadcasting apparatus are functionally integrated, in which the private broadcast media's dependence on government advertising revenue has produced a press that serves power rather than citizens.

This Part will examine the constitutional dimensions of this crisis from multiple angles: the inadequacy of the existing free speech framework, the theory of the democratic public sphere and its destruction, the specific mechanisms of digital authoritarianism as practiced in India, the comparative constitutional responses of other democracies to the crisis of the information environment, the jurisprudential debates about how constitutional free speech guarantees should be reinterpreted in the algorithmic age, and the proposals for constitutional reform that could provide an adequate framework for democratic communication in the twenty-first century.

The analysis draws on the rapidly developing fields of platform governance law, algorithmic accountability, digital constitutionalism, and the sociology of information warfare, as well as on the established traditions of constitutional free speech theory, public sphere theory, deliberative democracy, and the critical analysis of media and power that runs from Gramsci through Herman and Chomsky through the contemporary scholarship of scholars such as Zeynep Tufekci, Kate Klonick, and Tim Wu. It is a Part that is necessarily more speculative in its reform proposals than the earlier Parts, because the challenges it addresses are newer, more rapidly evolving, and less settled in their constitutional implications than the structural constitutional questions that

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earlier Parts analyzed. But the urgency of the analysis is, if anything, greater than that of the earlier Parts, because the destruction of the democratic public sphere is the destruction of the precondition for addressing any of the other constitutional crises this textbook has documented.

CHAPTER ONE: THE CONSTITUTIONAL FREE SPEECH FRAMEWORK AND ITS FUNDAMENTAL INADEQUACY FOR THE ALGORITHMIC AGE

1.1 Article 19(1)(a) and the Original Design of Free Speech Protection

The fundamental right to freedom of speech and expression, guaranteed by Article 19(1)(a) of the Constitution, is the constitutional provision most immediately implicated by the crisis of the democratic public sphere. It is also, in its current form, one of the most inadequate provisions of the Constitution for addressing that crisis.

Article 19(1)(a) protects the right of every citizen to freedom of speech and expression. Article 19(2) permits the state to impose reasonable restrictions on this freedom in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, in relation to contempt of court, defamation, or incitement to an offence. These are, in the formulation used by the Supreme Court in numerous judgments, the eight grounds on which the state may restrict speech.

The framework was designed for a particular conception of the speech problem. That conception assumed that the primary threat to free speech was state censorship: the state preventing citizens from saying things by using law to prohibit them. The constitutional protection was accordingly designed as a protection against state action: a right against the government, not against private actors. The horizontal application of the free speech right (its application between private actors rather than between citizen and state) is constitutionally very limited under the existing framework.

This conception of the free speech problem was already inadequate in 1950, when the primary threat to public discourse came not from formal legal censorship but from the structural constraints of the commercial press: the concentration of media ownership in the hands of those whose economic interests aligned with political power, the financial dependence of newspapers on advertising from business interests, and the cultural class biases of the educated professional class that dominated journalism. Herman and Chomsky's propaganda model, developed in the American context in Manufacturing Consent (1988), was already applicable to the Indian media landscape of the 1970s and 1980s, when newspapers and the nascent television industry were beginning to be captured by the combination of state patronage (government advertising) and corporate ownership.

But the inadequacy of the original constitutional framework for speech becomes catastrophically apparent when confronted with the reality of the digital information environment of 2025. The world of 2025 is not a world in which the primary speech problem is state censorship. It is a world in which:

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The primary mechanisms of political communication are private digital platforms, specifically Twitter (now X), Facebook, WhatsApp, Instagram, YouTube, and a growing range of other platforms, whose content moderation decisions, algorithmic amplification choices, and monetization structures are entirely outside the existing constitutional free speech framework, because they are decisions of private actors rather than state actors.

The primary threat to democratic discourse is not the state preventing citizens from speaking but the private platforms amplifying some speech over other speech in ways that systematically distort the information environment in favor of content that generates engagement at the cost of truth, nuance, and democratic deliberation.

The state has discovered techniques of speech suppression that do not technically violate the constitutional right to free speech: rather than prohibiting speech, the state funds counter-speech, deploys troll armies to drown out critical voices, manipulates platform algorithms through coordinated mass reporting, and creates a climate of intimidation in which self-censorship becomes rational even in the absence of formal prohibition.

The concentration of media power in the hands of a small number of corporate actors who have business relationships with the state creates structural incentives for media capture that are more effective than formal censorship and entirely outside the existing constitutional framework.

The constitutional framework's silence on all of these dimensions is not merely an oversight. It reflects the philosophical assumptions of the 1950 drafters, who did not and could not have anticipated the digital information environment. But it is a silence that has constitutional consequences of the gravest kind.

1.2 The Supreme Court and Digital Speech: A Jurisprudential Survey

The Supreme Court of India has, over the past decade, been forced to confront a series of cases that have pushed the boundaries of the Article 19(1)(a) framework in the digital context. The record is mixed: there are moments of genuine constitutional protection and moments of catastrophic judicial failure.

The most celebrated digital speech decision is Shreya Singhal v. Union of India (2015), in which the Supreme Court struck down Section 66A of the Information Technology Act, 2000. Section 66A had criminalized the sending by any computer resource of information that was "grossly offensive" or that caused "annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill will." The provision was so vague that it effectively criminalized any online communication that any recipient found offensive, and it had been used systematically to arrest and prosecute individuals for social media posts critical of politicians, political parties, and government policies.

The Shreya Singhal judgment was a genuine constitutional achievement. The Court applied the test of "reasonable restriction" stringently to the digital context, held that vague and overbroad criminal restrictions on online speech violated Article 19(1)(a), and affirmed that the internet was a medium through which constitutional free speech rights were exercised. The judgment also

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developed an important distinction between "discussion," "advocacy," and "incitement," holding that only speech that directly incites to violence or specific criminal acts can be restricted, while discussion and advocacy of even controversial or unpopular positions must be protected.

But the Shreya Singhal judgment's limitations are as significant as its achievements. The judgment addressed only the criminal censorship dimension of the digital speech problem. It said nothing about the algorithmic amplification problem, nothing about coordinated inauthentic behavior, nothing about state-sponsored disinformation, and nothing about the structural capture of digital platforms by political actors. It struck down one particularly blunt instrument of digital censorship while leaving untouched the far more sophisticated and pervasive tools of digital speech manipulation that the state and its allies were developing and deploying.

The Supreme Court's 2017 judgment in the Privacy case (K.S. Puttaswamy v. Union of India) recognized the right to privacy as a fundamental right under Article 21, with implications for digital speech that are still being worked out in subsequent litigation. The recognition of privacy as a fundamental right creates constitutional protection for, among other things, the private communications of individuals and the use of encryption in digital communications. But the BJP government's subsequent attempts to introduce requirements of "traceability" in WhatsApp messages (which would effectively require the platform to break its end-to-end encryption to identify the original sender of any forwarded message) are in direct tension with the privacy right recognized in Puttaswamy, and this tension has not yet been constitutionally resolved.

The IT Rules of 2021, notified by the Ministry of Electronics and Information Technology under the IT Act, represent the most comprehensive attempt by the Indian government to regulate digital platforms to date, and they have been the subject of extensive constitutional litigation. The Rules require significant social media intermediaries (those with more than five million users) to establish a grievance redress mechanism, appoint a Resident Grievance Officer, appoint a Chief Compliance Officer (who is criminally liable for platform compliance), appoint a Nodal Contact Person, and publish monthly compliance reports. The Rules also establish a government-constituted three-member appellate committee that can override the content moderation decisions of platforms, effectively giving the government a mechanism for requiring the removal of content that it finds objectionable, even if the platform's own editorial judgment would not require its removal.

The appellate committee provision has been widely criticized as an unconstitutional infringement of free speech rights and as a mechanism for government censorship that is only marginally less direct than formal prohibition. Multiple High Courts issued contradictory rulings on the constitutionality of the appellate committee provision, and the matter has been referred to the Supreme Court. As of April 2026, the constitutional challenge to the IT Rules is pending before a larger bench of the Supreme Court, and the outcome is one of the most consequential pending constitutional questions in Indian law.

The constitutional issues in the IT Rules litigation go beyond the specific provisions being challenged. The deeper constitutional question is: what is the appropriate constitutional framework for the regulation of digital platforms in a democratic society? This question requires the Court to develop constitutional doctrine about private platforms, algorithmic accountability,

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and the relationship between free speech, democratic discourse, and platform power that the existing Article 19(1)(a) framework is not designed to address.

1.3 The Positive Dimension of Free Speech: A Constitutional Gap

The dominant understanding of Article 19(1)(a) in Indian constitutional law is what constitutional theorists call a "negative" conception of free speech: the right protects citizens against state interference with their speech but does not impose any positive obligations on the state to create or maintain the conditions necessary for meaningful exercise of the right.

This negative conception is inadequate in a democratic system for two connected reasons. The first reason is the resource inequality problem: the right to speak freely is meaningless if one lacks the resources, access, or platform to communicate effectively. A constitutional system that protects the right to speech without ensuring any equality of communicative capacity is a system that protects the free speech of the powerful while leaving the poor, the marginalized, and the geographically remote without effective voice.

The second reason is the structural capture problem: in a media environment characterized by extreme concentration of ownership, by the algorithmic amplification of some voices over others, and by the financial dependence of media institutions on state and corporate patronage, the formal protection of free speech without structural regulation of the information environment produces not a marketplace of ideas but a marketplace of propaganda, in which those who control the distribution channels determine what is heard.

The constitutional jurisprudence of some other democracies has recognized the positive dimension of free speech rights. The German Federal Constitutional Court, in a long line of decisions beginning in the 1950s, has held that the Basic Law's guarantee of freedom of expression creates not only a defensive right against state interference but a structural obligation on the state to create and maintain the conditions for a free and pluralistic public opinion formation process. This structural obligation includes, in German constitutional law, obligations with respect to public broadcasting, with respect to press concentration, and with respect to the rules governing access to communication channels.

The Indian Supreme Court has, in a handful of decisions, gestured toward a similar understanding. In Secretary, Ministry of Information and Broadcasting, Government of India v. Cricket Association of Bengal (1995), the Court held that the airwaves were public property and that the government's monopoly of broadcasting was unconstitutional, leading to the liberalization of the broadcast sector. The Court affirmed that the right to freedom of speech and expression includes the right to receive information and that the government had an obligation to ensure that citizens have access to a plurality of views through the broadcast medium.

But the Cricket Association of Bengal judgment was not followed by a coherent constitutional doctrine of structural free speech protection. The broadcast sector was liberalized, but the liberalized broadcast sector quickly became a site of concentration and of political capture that was arguably more conducive to manipulation than the government monopoly it replaced. The constitutional tools for addressing this were not developed.

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The gap between the negative and positive dimensions of free speech in Indian constitutional law is a gap that has been dramatically widened by the rise of digital platforms. The negative right protects individual citizens against state censorship. It does not create any constitutional obligation for the state to ensure that digital platforms are designed in ways that promote democratic deliberation, that users have access to truthful information, that algorithmic amplification does not systematically distort the information environment, or that the dominant modes of political communication are not captured by state or corporate interests that use them to manufacture consent rather than enable it.

CHAPTER TWO: THE THEORY OF THE DEMOCRATIC PUBLIC SPHERE AND ITS DESTRUCTION

2.1 Habermas, the Public Sphere, and Its Constitutional Significance

The concept of the public sphere, developed by Jurgen Habermas in The Structural Transformation of the Public Sphere (1962, translated to English 1989) and refined in subsequent work including The Theory of Communicative Action and Between Facts and Norms, provides the most important theoretical framework for understanding the constitutional significance of the crisis of democratic discourse in India.

Habermas's concept of the public sphere refers to the social space in which private individuals come together as a public to discuss matters of common concern, forming public opinion through the exercise of communicative reason. The public sphere is neither the state nor the economy but a third domain in which political legitimacy is generated through rational discourse: through the exchange of arguments, the testing of claims against evidence and reason, and the formation of considered public judgments that can hold political power to account.

The constitutional significance of the Habermasian public sphere is this: in a democratic constitutional order, the authority of law and government derives not merely from formal majoritarian procedures (the fact that a law was passed by a majority) but from the quality of the deliberative process through which it was enacted, a process in which all affected parties had an equal opportunity to participate, to advance arguments, and to be heard. A constitutional democracy that maintains the formal procedures of majority rule while destroying the substantive conditions of democratic deliberation is not a genuine democracy: it is what Fareed Zakaria called an "illiberal democracy" and what scholars of democratic backsliding now call "competitive authoritarianism."

The destruction of the public sphere is therefore not merely a social or cultural problem. It is a constitutional problem: it is the destruction of the communicative foundation of constitutional legitimacy. A government that manufactures its own democratic mandate through the manipulation of the information environment is not a democratically legitimate government, even if it wins elections held under formally correct procedures. Elections without deliberation are acclamation, not democracy.

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The Indian public sphere has been systematically destroyed across multiple dimensions. The analysis that follows examines each dimension of this destruction and its constitutional implications.

2.2 The Broadcast Media Capture: A Constitutional Catastrophe

The most immediate and most visible dimension of the destruction of the Indian public sphere is the capture of the broadcast media by political power, specifically by the BJP government that has been in office since 2014 and has intensified its control over the media environment with each successive year of power.

Television broadcasting is the dominant medium of political information for the majority of Indian citizens. More than 880 television channels are licensed to broadcast in India, reaching a combined daily audience of several hundred million viewers. The major Hindi-language news channels, which have the largest audiences in the political news segment, include channels that are either owned by individuals with close political ties to the BJP leadership or are dependent on government advertising revenue in ways that create powerful structural incentives for political deference.

The capture of television news by political power in India is documented in exhaustive detail by the reports of multiple international press freedom organizations, including Reporters Without Borders (RSF), the Committee to Protect Journalists (CPJ), Freedom House, and the India-specific assessments of the V-Dem Institute. India's ranking in the RSF Press Freedom Index fell from 140th out of 180 countries in 2014 to 159th in 2023, recovering marginally to 151st in 2025 in the context of some court interventions, but remaining firmly in the bottom quartile of global press freedom assessments. The V-Dem Institute's 2025 Democracy Report classified India as an "electoral autocracy" on its Liberal Democracy Index, a classification that reflects, among other factors, the severe deterioration of media independence.

The mechanisms of broadcast media capture are multiple and mutually reinforcing. The first mechanism is ownership: several of the most politically influential television channels are owned by corporate groups with extensive business interests in sectors where government approvals, licenses, and regulatory decisions are crucial. The Mukesh Ambani-owned Reliance Industries, through its subsidiary Network18, controls a substantial portfolio of news channels including CNN-News18, News18 India, and regional language news channels across India. The political implications of this ownership concentration in a company whose relationship with the BJP government has been extensively documented are obvious.

The second mechanism is advertising: the government of India is the single largest advertiser in the Indian media market. Government advertising revenue, including central government advertising and state government advertising in BJP-ruled states, constitutes a substantial portion of the revenue of many broadcast channels. The distribution of government advertising has been documented, in multiple investigative reports, to follow a pattern that rewards politically friendly coverage and penalizes critical reporting. This is not a formal quid pro quo in most cases, but it creates a structural incentive that functions as effectively as formal censorship.

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The third mechanism is regulatory pressure: the Ministry of Information and Broadcasting retains substantial regulatory authority over broadcast channels, including the authority to suspend or revoke licenses, to impose fines for violations of content regulations, and to require channels to air government-prescribed content. While the formal use of these powers against critical channels is limited (and when attempted, as in the temporary suspension of some channels, it has attracted significant criticism), the threat of regulatory action functions as a deterrent to critical journalism.

The constitutional implications of broadcast media capture are severe. The Supreme Court held in Cricket Association of Bengal that the broadcast spectrum is public property and that the government has an obligation to ensure that the broadcast medium serves the public interest and provides access to a plurality of views. If the broadcast medium has been captured by a combination of ownership concentration, advertising dependence, and regulatory pressure in ways that systematically produce politically biased coverage that serves the government rather than the public, this is a constitutional failure that needs a constitutional remedy.

The remedy requires, first, a constitutional recognition that the right to freedom of speech and expression includes the right to access a genuinely pluralistic and independent broadcast media. Second, it requires the establishment of a genuinely independent broadcast regulatory authority, constitutionally insulated from political pressure, with a mandate to ensure editorial independence and pluralism. Third, it requires constitutional restrictions on media ownership concentration, requiring that no single owner control more than a specified fraction of the total media market, and that owners with dominant business interests in regulated sectors be prohibited from owning news channels that cover those sectors. Fourth, it requires a constitutional restructuring of the government advertising market to ensure that advertising is distributed on objective criteria related to audience reach rather than on criteria related to political compliance.

2.3 The WhatsApp Universe: Disinformation at Scale and the Constitutional Vacuum

If the capture of television broadcasting represents the capture of the formal public sphere, the weaponization of WhatsApp represents the capture of the informal public sphere: the networks of family, friends, community, and religious group through which the majority of Indians receive and discuss political information.

WhatsApp, with approximately 550 million users in India as of 2025, is the dominant communication platform for the vast majority of Indian internet users. Unlike Twitter or Facebook, WhatsApp communications are encrypted and are not visible to the public or to platform moderators in their content (though the platform can access metadata about message patterns). The platform's "Groups" feature, which allows up to 1,024 members in a single group, and its "Communities" feature, which aggregates multiple groups under a single administrator, have created a vast informal communication infrastructure through which political content, both genuine and manufactured, is distributed to tens of millions of citizens.

The infrastructure of BJP's political communication on WhatsApp, which was documented in extraordinary detail by journalists including Snigdha Poonam (in Dreamers: How Young Indians

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Are Changing the World), by researchers at the Oxford Internet Institute, and by investigative outlets including The Wire and Article 14, consists of a hierarchical network of WhatsApp groups organized from the national to the constituency level, through which the party's political messaging is coordinated and distributed. This network, often called the "WhatsApp army," employs thousands of individuals at various levels to create, curate, and distribute political content tailored to different regional and linguistic audiences.

The political content distributed through this network includes not only legitimate political advocacy but systematic disinformation: fabricated quotes attributed to opposition leaders, manipulated videos, false claims about government schemes, communal propaganda designed to inflame tensions between religious communities, and coordinated campaigns of harassment against journalists and civil society voices critical of the government.

The constitutional challenge posed by WhatsApp-based disinformation is profound. The content is private communication, not public speech: it is shared in groups whose membership is voluntary and whose content is encrypted. The constitutional protection of the right to speech and the right to private communication, reinforced by the right to privacy recognized in Puttaswamy, means that a regime of broad state monitoring of WhatsApp communications would be constitutionally impermissible. Yet the scale of the disinformation problem, and its documented consequences for communal violence (WhatsApp disinformation has been directly implicated in at least 40 incidents of mob violence between 2017 and 2024, including lynchings), creates powerful pressure for regulatory intervention.

The government's proposed solution, the "traceability" requirement in the IT Rules, which would require platforms to identify the "first originator" of any message forwarded more than five times, has been challenged as unconstitutional on privacy and free speech grounds. The challenge is well-founded: traceability requires breaking end-to-end encryption, which would expose all private communications to potential state surveillance, creating a chilling effect on private speech and association that is inconsistent with the constitutional right to privacy.

But the rejection of traceability does not resolve the constitutional problem of disinformation at scale. A constitutional framework that protects private disinformation from both state surveillance and platform moderation, while the organized deployment of disinformation destroys the conditions of democratic deliberation, is not a constitutionally adequate framework for democratic speech.

The resolution of this tension requires thinking beyond the binary of state censorship versus unregulated private speech. Constitutional scholars including Gautam Bhatia, in his work on constitutional free speech in the digital age (Private Power and the Constitution, 2023), and Chinmayi Arun, in her analysis of platform accountability and Indian constitutional law, have argued that the constitutional framework must be expanded to address the structural problem of privately organized disinformation campaigns, through mechanisms that do not require content surveillance but do require transparency about the sources and funding of organized political communication campaigns.

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Mandatory disclosure of who has funded organized political communication campaigns, transparency about the use of coordinated networks for political messaging, prohibition of the use of automated accounts and artificial amplification in political communication, and requirements that platforms audit and report on the patterns of organized inauthentic behavior on their services, are mechanisms that address the disinformation problem without requiring content monitoring or encryption-breaking. They are mechanisms that address the structural organization of manipulation rather than the content of individual messages.

These mechanisms require a constitutional framework that recognizes the difference between individual free speech (which is entitled to strong constitutional protection) and organized political communication campaigns (which are a form of political activity subject to constitutional regulation in the public interest). This distinction, which is analogous to the distinction between individual political expression and campaign finance, has been developed in some American constitutional scholarship but has not yet been adequately theorized in the Indian constitutional context.

CHAPTER THREE: ALGORITHMIC AUTHORITARIANISM AND THE CONSTITUTIONAL CRISIS OF ATTENTION

3.1 The Political Economy of Algorithmic Attention

The term "algorithmic authoritarianism" was coined by Chinese internet scholars to describe the use of algorithmic recommendation systems by authoritarian states to control the information diet of their citizens. But the concept has been extended by scholars including Zeynep Tufekci (Twitter and Tear Gas, 2017), Shoshana Zuboff (The Age of Surveillance Capitalism, 2019), and Max Fisher (The Chaos Machine, 2022) to describe a more pervasive phenomenon: the way in which the algorithmic systems of commercial social media platforms, designed to maximize engagement rather than to serve democratic deliberation, produce an information environment that is structurally hostile to the kind of reflective, evidence-based deliberation that democratic citizenship requires.

The basic mechanism of algorithmic attention capture is well-established and extensively documented. Social media platforms, whose business model depends on selling advertising against user attention, deploy recommendation algorithms optimized to maximize the amount of time users spend on their platforms. Research by engineers and behavioral scientists within these platforms, as well as by independent academics, has consistently found that content that generates strong emotional responses, particularly fear, anger, and outrage, generates more engagement than content that is accurate, nuanced, or constructive. The algorithmic consequence of this finding is that recommendation systems systematically amplify emotionally provocative content, false information (which is more likely to be novel and therefore engaging), and content that reinforces rather than challenges existing beliefs (because confirmation bias makes such content more satisfying and therefore more engaging).

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The constitutional implications of this algorithmic dynamic for democratic discourse are severe. A public sphere in which the dominant information-distribution mechanism systematically amplifies falsehood over truth, outrage over reason, tribal solidarity over civic solidarity, and emotionally manipulative content over accurate information is a public sphere that is structurally hostile to democratic deliberation. Citizens who receive their political information primarily through these algorithmically distorted channels are not better informed as a result of that information: they are more misinformed, more polarized, and more susceptible to manipulation.

The constitutional problem is that this algorithmic distortion of the public sphere is accomplished entirely by private actors, acting within their legal rights as platform operators. The existing constitutional framework has no tools to address it. Article 19(1)(a) protects free speech against state interference but imposes no obligations on private platforms. No constitutional provision requires that the dominant modes of political communication serve democratic deliberation rather than advertising revenue.

The parliamentary response to the algorithmic attention problem has been fragmented and inadequate. The IT Rules of 2021 require platforms to publish monthly compliance reports and to establish grievance redress mechanisms, but these requirements address the symptoms of platform dysfunction (individual instances of harmful content) rather than the structural design choices (algorithmic amplification of harmful content categories) that produce the dysfunction. The Digital Personal Data Protection Act of 2023 addresses some dimensions of the surveillance capitalism business model, but its focus on individual data rights rather than on structural platform governance means that it does not address the algorithmic amplification problem.

The constitutional framework that is needed must address the platform governance problem at the structural level: not merely requiring platforms to remove specific pieces of harmful content but requiring them to audit, report on, and where necessary modify the algorithmic systems that determine which content is amplified and which is suppressed. This requires constitutional recognition that the right to democratic participation includes a right to an information environment that is not systematically designed to undermine democratic deliberation, and that the state has a constitutional obligation to ensure that the dominant modes of political communication are consistent with this right.

3.2 The IT Cell Infrastructure and the Manufactured Consent Machine

The BJP's IT cell infrastructure, which has been described as one of the most sophisticated political communication operations in the world, represents the intersection of algorithmic platform dynamics and organized political disinformation in ways that are constitutionally significant and constitutionally unaddressed.

The BJP's IT cell, which is formally part of the party's organizational structure, and the network of affiliated organizations including the Vishwa Hindu Parishad's digital operations and the RSS-affiliated network of social media groups, deploys a combination of human operators and automated tools to achieve several overlapping political objectives.

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The first objective is the creation and distribution of favorable political content. The cell employs content creators who produce the vast volume of political messaging that is distributed through the WhatsApp network described in the previous chapter: memes, infographics, video clips, speeches, and other content designed to promote the BJP's political messaging and the personal brand of its leaders, particularly Narendra Modi.

The second objective is the suppression of unfavorable content. This is accomplished through coordinated mass reporting of social media posts critical of the government or of BJP leaders. Social media platforms' content moderation systems rely heavily on user reports as signals of potentially violating content. A coordinated mass reporting campaign can trigger automated content removal or account suspension against a target who has not violated any platform rules, by overwhelming the platform's systems with false reports. This mechanism has been documented as used systematically against journalists, activists, and opposition politicians in India.

The third objective is the harassment and intimidation of critics. The weaponization of social media for the intimidation of journalists, academics, and civil society voices critical of the government has been documented in exhaustive detail by organizations including the Committee to Protect Journalists and Amnesty International. Coordinated campaigns of harassment, including the sharing of personal information (doxxing), threats of violence, sexual harassment, and targeted flooding of accounts with abusive content, have driven numerous journalists and civil society voices off social media or into self-censorship.

The fourth objective is the management of trending topics and the artificial amplification of favorable narratives. Coordinated behavior by large networks of accounts (some automated, some human) can artificially drive topics to "trending" status on Twitter and other platforms, creating the false impression of organic public interest in government-favorable narratives and suppressing attention to unfavorable ones.

The constitutional implications of these practices are profound. Each individual instance of these practices is arguably within the constitutional rights of the individual participants: individuals have the right to create political content, to report posts they find objectionable, and to participate in public discourse. But the organized, coordinated, funded deployment of these individual rights by a political party, in ways that systematically distort the information environment to serve the party's political interests and to suppress the free speech of critics, is a form of political activity that raises distinct constitutional questions.

Constitutional scholars have begun to argue that organized inauthentic behavior, the coordinated deployment of manufactured social media activity to distort public perception of political opinion, is a form of political fraud that violates the constitutional right of citizens to the genuine information environment necessary for democratic self-governance. This argument draws on the constitutional doctrine of the "right to know," which the Supreme Court recognized in State of U.P. v. Raj Narain (1975) as implicit in Article 19(1)(a), and on the broader constitutional understanding that democracy requires not merely formal procedures but substantive conditions of informed citizen choice.

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The 2024 judgment of the Supreme Court striking down the electoral bond scheme, Association for Democratic Reforms v. Union of India, is relevant here in an indirect way. The Court held that the right to information under Article 19(1)(a) includes the right of voters to know the sources of funding of political parties, because this information is necessary for voters to make informed choices. The same constitutional logic extends, one can argue, to the right of voters to know when the political discourse they encounter on social media is the product of organized, funded manipulation rather than genuine organic expression of citizen views. If voters have a right to know who funds political parties, they surely have a right to know when the "grassroots" political opinion they encounter is manufactured by a party's IT cell.

3.3 The Suppression of Dissent in the Digital Age: UAPA, Sedition, and the Constitutional Chilling Effect

The constitutional weaponization of criminal law against digital speech represents the most direct and most brutal dimension of the assault on the democratic public sphere. While the algorithmic amplification of disinformation and the organized manufacture of political consent represent the indirect destruction of democratic discourse, the use of criminal law against journalists, activists, and ordinary citizens for their online speech represents the direct suppression of the speech that the Constitution explicitly protects.

The Unlawful Activities (Prevention) Act, analyzed in detail in Part Three of this textbook, has been used extensively against individuals for their digital speech. The pattern is consistent: journalists who report on state violence, activists who organize opposition to government policies, academics who publish critical analyses, and ordinary citizens who share critical political content online have been arrested and charged with UAPA offenses, including in several cases with the charge of supporting "terrorist" organizations, on the basis of their digital communications.

The cases of journalist Siddique Kappan (arrested in 2020 while travelling to report on the Hathras gang rape case, charged under UAPA, spent two years in prison without trial), of NewsClick editor Prabir Purkayastha (arrested in October 2023 under UAPA on allegations of receiving foreign funding for "anti-India" reporting, with the FIR citing his editorial coverage of farmer protests and COVID policies as evidence of unlawful activity), of Assamese journalist Manjit Mahanta (arrested in 2024 for social media posts allegedly inflammatory, held without bail for four months), and of the 16 activists arrested in the Bhima Regaon case, many on the basis of digital documents that multiple forensic analyses have shown to be planted on their computers, illustrate a systematic pattern of using UAPA to suppress digital speech that is politically inconvenient.

The constitutional chilling effect of these prosecutions is enormous and impossible to quantify accurately. For every journalist who is arrested, dozens more decide that the risk of covering certain stories is too great. For every activist who is prosecuted for online speech, thousands more delete their posts and moderate their public expression. The deterrent effect of criminal prosecution is the point: the purpose of these prosecutions is not primarily to convict the individuals charged but to signal to the broader community of critical voices that digital speech critical of the government is legally dangerous.

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This use of criminal law to produce self-censorship is constitutionally equivalent to formal censorship in its effect on the public sphere, but it is constitutionally harder to challenge because each individual prosecution can be defended as the legitimate exercise of criminal law enforcement rather than as censorship. The constitutional doctrine of the "chilling effect," which was developed in American First Amendment jurisprudence and has been recognized by the Indian Supreme Court in cases including Romesh Thappar and Shreya Singhal, holds that a restriction on speech is constitutionally invalid if it produces a chilling effect on protected speech broader than the specific speech it targets. The systematic use of UAPA against digital journalists produces precisely this chilling effect, and a constitutionally rigorous application of the chilling effect doctrine would require the Court to examine the aggregate effect of the prosecution pattern rather than each individual prosecution in isolation.

The Supreme Court has, in the context of the Arnab Goswami bail case in 2020, affirmed that the constitutional protection of personal liberty under Article 21 requires courts to be particularly vigilant about the use of criminal law to suppress speech. But this affirmation has not been translated into a systematic doctrine that provides meaningful constitutional protection against the pattern of UAPA prosecutions targeting digital speech.

CHAPTER FOUR: COMPARATIVE CONSTITUTIONAL RESPONSES TO THE CRISIS OF DIGITAL DEMOCRACY

4.1 The European Digital Services Act: A Constitutional Model?

The European Union's Digital Services Act (DSA), which became fully applicable to all platform service providers in February 2024, represents the most comprehensive attempt by any major legal jurisdiction to address the structural governance of digital platforms in ways that serve democratic values. Its constitutional implications for India are significant and deserve detailed analysis.

The DSA establishes a tiered regulatory framework that imposes increasing obligations on platforms as a function of their size and systemic risk. Very Large Online Platforms (VLOPs) and Very Large Online Search Engines (VLOSEs), defined as those with more than 45 million monthly active users in the EU, are subject to the most intensive obligations, including requirements to conduct annual systemic risk assessments of their services, to implement reasonable mitigation measures for identified systemic risks including threats to civic discourse and electoral processes, to make their algorithms and recommendation systems auditable by vetted researchers and regulators, to provide users with meaningful choices about the algorithmic curation of their feeds (including the option to access chronological rather than algorithmically sorted content), and to report annually to regulators on their compliance.

The DSA's approach to the risk to democratic discourse is particularly notable. Article 34 of the DSA requires Very Large Online Platforms to assess "actual or foreseeable negative effects for the exercise of fundamental rights, in particular the fundamental rights to human dignity, private and family life, protection of personal data, freedom of expression and information, the

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prohibition of discrimination, the rights of the child, and the right to an effective remedy and to a fair trial." Article 35 requires the implementation of reasonable, proportionate, and effective mitigation measures to address identified systemic risks.

This is, in constitutional terms, a recognition that the right to freedom of expression has a structural dimension that includes a right to an information environment that is not systematically distorted by algorithmic design choices that undermine democratic discourse. The DSA does not give the EU government the authority to determine what content platforms host, but it does give regulators the authority to require that platforms audit and mitigate the systematic risks to democratic discourse created by their algorithmic systems.

The constitutional model offered by the DSA is relevant to India in several respects. First, it demonstrates that it is possible to regulate the structural governance of digital platforms in ways that protect democratic discourse without requiring content censorship, breaking encryption, or creating state surveillance of private communications. The DSA's focus is on the systemic effects of platform design choices rather than on individual pieces of content, and this systemic focus is both constitutionally safer and practically more effective.

Second, the DSA's requirements for algorithmic transparency and auditability provide a model for the constitutional obligation of platforms to account for the effects of their systems on democratic discourse. If recommendation algorithms are identified as systematic amplifiers of disinformation and political polarization, regulators have the authority to require modifications. This is analogous to the constitutional obligation, in Indian constitutional law, for state action affecting fundamental rights to be proportionate and reasonable: the same logic of proportionality and reasonableness can be applied to private platform design choices that affect the constitutional right of citizens to a democratic information environment.

Third, the DSA's requirement that users be offered meaningful choices about algorithmic curation, including the option of chronological feeds not shaped by engagement optimization, respects user autonomy while reducing the systemic risk of engagement-optimized recommendation systems. This is a constitutionally sound approach: it does not prohibit algorithmic curation but ensures that citizens have a meaningful choice about whether to submit their information environment to engagement-optimizing algorithms.

The DSA's limitations are also instructive. The regulation is EU-specific and applies to platforms operating in the EU market; its enforcement against platforms that withdraw from the EU market is limited. Its effectiveness against state-sponsored disinformation is uncertain: the regulation targets platform design choices, not the organized political actors who use platforms to deploy disinformation. And the EU's own political environment is not immune to the problems of digital disinformation and platform capture that afflict other democracies.

But as a model for constitutional platform governance, the DSA represents a significant advance over both the completely unregulated approach and the crude censorship-based approach. India's constitutional reform agenda in this area should study the DSA carefully, adapt its useful elements to the specific constitutional and political context of India, and develop complementary mechanisms to address the dimensions of the problem that the DSA does not cover.

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4.2 The United States: The First Amendment Absolutism Problem

The contrast between the EU's DSA approach and the United States' approach to digital platform governance is instructive for different reasons. The United States, whose First Amendment has been interpreted as prohibiting virtually all government regulation of the content of speech, including online speech, has been unable to develop a comprehensive regulatory framework for digital platforms despite extensive congressional and regulatory attention to the problem.

The Supreme Court of the United States' 2024 decision in Moody v. NetChoice, which addressed state laws in Texas and Florida that attempted to prevent social media platforms from moderating political content, affirmed that platforms have a First Amendment right of editorial discretion in their content moderation decisions. The Court also held that users have a First Amendment right to receive information from platforms. But the judgment, which was fractured and complex, did not establish clear constitutional principles governing the relationship between platform editorial discretion and democratic governance, leaving the constitutional framework for platform regulation deeply uncertain.

The practical consequence of First Amendment absolutism in the digital platform context is that the state lacks the constitutional tools to require platforms to address the systemic risks to democratic discourse created by their algorithmic design choices. The same constitutional norm that protects individual citizens from state censorship also protects the trillion-dollar corporations that control the dominant modes of political communication from regulatory requirements that would serve the democratic public interest.

This American constitutional predicament is, in one sense, the mirror image of the Indian constitutional predicament. India's Article 19(1)(a) framework provides inadequate protection against state censorship (because reasonable restrictions are too broadly drawn and too permissively interpreted) while also providing no tools for structural regulation of private platforms. The United States' First Amendment framework provides strong protection against state censorship but provides no tools for structural regulation of private platforms, for different reasons. Both constitutional frameworks are inadequate for the digital age, for different reasons, and the reform agendas must address different problems.

The Indian constitutional reform agenda has, in this comparative context, an advantage that the United States does not have: the Indian Constitution is not a document of First Amendment absolutism. Article 19(2) already permits reasonable restrictions on speech in the public interest. The Supreme Court has already recognized that freedom of expression has a structural dimension that includes the right to access information and the right to a pluralistic media environment. The constitutional tools for platform regulation in the public interest are potentially available within the existing constitutional framework, subject to interpretation, supplemented by explicit constitutional provisions if necessary.

4.3 Germany: The NetzDG Model and Its Indian Implications

Germany's Network Enforcement Act (Netzwerkdurchsetzungsgesetz, NetzDG), enacted in 2017, was one of the first national laws to impose specific content moderation obligations on

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social media platforms, requiring them to remove clearly illegal content within specified timeframes or face substantial fines. The law has been controversial, both within Germany and internationally, for the over-removal risk it creates: faced with substantial fines for leaving illegal content up, platforms may err on the side of removal, potentially censoring legal speech.

The constitutional challenge to the NetzDG in the German Constitutional Court resulted in a significant modification of the law's provisions, including the addition of a counter-notification mechanism allowing users to challenge the removal of their content and an obligation to notify both the reporter and the poster of the outcome of content moderation decisions. The revised framework attempts to balance the legitimate interest in removing clearly illegal content against the risk of platform over-removal of legal speech.

The NetzDG experience illustrates both the possibilities and the risks of using mandatory content removal requirements as a tool for improving the health of the information environment. On the positive side, it has produced documented reductions in clearly illegal content including hate speech and incitement to violence on German-language platforms. On the negative side, it has created incentives for over-removal, has been criticized for outsourcing content governance decisions to private platforms without adequate procedural protections, and has not addressed the structural algorithmic amplification problem that is the deeper driver of the disinformation crisis.

For India, the NetzDG model is relevant as one component of a comprehensive platform governance framework, but it is not sufficient on its own. The experience of the Indian government's IT Rules, which drew partly on the NetzDG model for their content removal requirements, illustrates the additional risks of mandatory content removal requirements in an environment where the government is itself a primary actor of disinformation and has demonstrated a willingness to use content removal requirements as a mechanism for suppressing political opposition rather than genuinely harmful content.

A constitutional platform governance framework for India therefore cannot rely primarily on mandatory content removal requirements. It must instead combine requirements of transparency about platform design and algorithmic amplification, requirements of auditability of recommendation systems, requirements of meaningful user choice about algorithmic curation, robust procedural protections against government-ordered content removal, constitutional protection of encrypted communications, and mandatory disclosure of organized political communication campaigns, within a framework governed by an independent regulatory body constitutionally insulated from political direction.

CHAPTER FIVE: THE CONSTITUTIONAL DIMENSIONS OF POLITICAL PROPAGANDA AND STATE-MEDIA RELATIONS

5.1 Prasar Bharati and the Constitutional Obligation of Public Broadcasting

Prasar Bharati, the statutory corporation that operates Doordarshan (the national television broadcaster) and All India Radio (the national radio broadcaster), is constitutionally significant

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as the largest broadcast media operation in the country. Doordarshan alone reaches approximately 600 million viewers, including vast populations in rural India who have no access to cable or satellite television and for whom Doordarshan is their primary source of broadcast news and information.

The Prasar Bharati Act, 1990, which constituted Prasar Bharati as an autonomous statutory corporation, declared in its preamble the objective of establishing "an autonomous public service broadcaster" that would serve the people of India "by disseminating information, educating and entertaining them." The Act established a Board of Directors for Prasar Bharati, with provisions intended to insulate it from governmental direction in its programming decisions.

The gap between this constitutional intention and the actual operation of Prasar Bharati is vast and well-documented. In practice, Doordarshan has functioned as a state broadcaster in the most straightforward sense: a broadcaster that serves as a propaganda organ of the government in power. During the BJP government of 2014-present, Doordarshan's news coverage has been characterized by systematic prioritization of government-favorable content, systematic omission of news unfavorable to the government, and a tone of political alignment with the ruling party that makes it indistinguishable, in its political character, from a party-owned broadcaster.

The constitutional implications of the state capture of public broadcasting are severe. Citizens who depend on Doordarshan and All India Radio for their primary news and political information, which includes the majority of rural citizens who have no access to cable or satellite television, are receiving not the "information" that the Prasar Bharati Act promised but political propaganda. This is a constitutional failure that directly undermines the communicative conditions of democratic citizenship.

The constitutional remedy requires, first, a constitutional entrenchment of the independence of the public broadcaster, analogous to the constitutional entrenchment of the independence of the Election Commission. The Prasar Bharati Board should be constituted not by government appointment but by an independent process, and its members should have security of tenure comparable to that of superior court judges. The BBC's governance model, under which the BBC Board is appointed through an independent process and its editorial independence is protected by a Royal Charter rather than by political goodwill, provides one model, though the BBC itself has experienced political pressure in recent years that has demonstrated the limitations of statutory independence without genuine civic culture of broadcaster independence.

Second, the funding model of public broadcasting must be constitutionally insulated from political manipulation. If Doordarshan's operational budget is dependent on the goodwill of the government, its editorial independence is necessarily constrained. A constitutional provision establishing an independent fund for public broadcasting, with revenues derived from a dedicated levy rather than from the annual appropriations process, would provide the financial independence that editorial independence requires.

Third, the public broadcaster must be constitutionally required to provide balanced, accurate, and pluralistic coverage of political affairs, with an independent complaints mechanism that citizens

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can access when they believe this obligation has been violated. The obligation of balance and accuracy must be enforceable, not merely aspirational.

5.2 The Electoral Communication Framework: Constitutional Failures in Campaign Regulation

The regulation of electoral communication, including political advertising, campaign messaging, and the use of digital platforms for electoral campaigning, represents one of the most urgent constitutional gaps in the existing framework.

The Model Code of Conduct, which is enforced by the Election Commission of India during the period immediately before elections, provides some regulation of electoral speech and conduct. But the MCC is not constitutionally entrenched: it is a convention rather than a legal instrument, enforceable by the moral authority of the Election Commission rather than by constitutional obligation. Its coverage of digital political advertising and social media campaigning has been inconsistent and inadequate.

The BJP's use of the Narendra Modi government's achievements in state and central government advertising as political campaign content, the use of government machinery including official communication channels for political messaging, and the differential enforcement of MCC provisions between the ruling party and opposition parties have all been documented as systematic abuses that the existing constitutional and legal framework has been unable to address.

The constitutional reform of electoral communication requires several elements. First, a constitutional definition of "paid political communication" that covers not only formally labeled advertising but any communication that is funded, sponsored, or coordinated by a political party or its affiliates, including organic-seeming social media content produced by funded IT cells. Second, mandatory disclosure of all paid political communication, including its source, its budget, and the platforms on which it is distributed. Third, equal access provisions requiring platforms to offer equivalent rates and placements to all political parties and candidates. Fourth, a prohibition on the use of government communication resources, including official websites, social media channels, and print publications, for political messaging during electoral periods.

The Supreme Court's jurisprudence on electoral integrity, including the significant judgment in Association for Democratic Reforms that struck down the electoral bond scheme, provides a constitutional foundation for these reforms in the right to information and the right of voters to make informed choices. The extension of this jurisprudence to the regulation of digital electoral communication is a natural and necessary constitutional development.

5.3 The Sedition Provision: From Colonial Silencing to Digital Age Weaponization

The constitutional history of sedition in India is a microcosm of the broader history of colonial legal inheritance and its contemporary misuse. Section 124A of the Indian Penal Code, which criminalizes "sedition," defined as exciting or attempting to excite "disaffection" toward the government, was enacted by the British colonial government in 1870, specifically designed to

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suppress nationalist political expression. It was used against Bal Gangadhar Tilak in 1897 and 1908, against Mohandas Gandhi in 1922, and against numerous other nationalist leaders.

The Constitution's framers debated whether to retain the sedition provision and ultimately chose not to include "sedition" in the list of grounds for reasonable restrictions in Article 19(2). The Constituent Assembly debates reflect a clear intention that the constitutional framework should not permit the criminalization of political speech merely because it was critical of the government. The Supreme Court, in Kedar Nath Singh v. State of Bihar (1962), narrowed the application of sedition to speech that incites violence or public disorder, holding that criticism of the government, even if strongly worded, is constitutionally protected.

But the Kedar Nath Singh limitations on sedition prosecutions have been systematically ignored in practice. The use of Section 124A in the digital age has been particularly aggressive: journalists, academics, students, and ordinary citizens have been charged with sedition for social media posts, WhatsApp messages, and online articles that were critical of the government or expressed solidarity with protest movements. A study by the India Civil Liberties Union found that sedition cases increased dramatically between 2014 and 2022, with a substantial proportion of cases involving digital speech.

The Supreme Court's 2022 order in S.G. Vombatkere v. Union of India, which stayed all pending trials and investigations under Section 124A while the provision's constitutional validity was examined, was an important constitutional intervention. The Court's preliminary view that the colonial-era provision was likely unconstitutional in its current form, as applied to modern political speech, reflects a constitutional understanding consistent with the Kedar Nath Singh framework and with the Shreya Singhal doctrine of protecting advocacy short of incitement.

The BJP government, in a political move combining surface reform with preservation of the underlying legal infrastructure of speech suppression, introduced the Bharatiya Nyaya Sanhita (BNS) in 2023 to replace the Indian Penal Code. The BNS nominally deleted the sedition provision (Section 124A) but replaced it with a new provision (Section 152 of the BNS) that criminalizes actions that "endanger the sovereignty, unity and integrity of India" through, among other things, "provocative speech or conduct." Critics have argued that Section 152 is sedition by another name, that it retains the essential mechanism of criminalizing political speech that the state finds threatening while removing the word that had become constitutionally and politically embarrassing.

The constitutional challenge to Section 152 has been initiated in multiple High Courts and is likely to come before the Supreme Court. The constitutional analysis requires addressing the same questions as the sedition analysis: Does the provision criminalize speech that falls within the protected categories of discussion and advocacy? Is the provision so vague that it creates an unconstitutional chilling effect on protected speech? Does its application in practice, as with sedition, target political critics rather than genuinely threatening speech?

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CHAPTER SIX: INFORMATION WARFARE, FOREIGN INTERFERENCE, AND THE CONSTITUTIONAL DIMENSIONS OF NATIONAL INFORMATION SECURITY

6.1 Digital Colonialism and the Constitutional Information Sovereignty Question

The crisis of the Indian public sphere is not only an internal political problem. It is also a problem of external interference and of the structural dependence of Indian digital infrastructure on foreign-controlled platforms and technologies, a dependence that raises constitutional questions of information sovereignty that the existing constitutional framework is entirely unprepared to address.

The dominant social media platforms through which Indian political discourse is mediated are American corporations: Meta (Facebook, Instagram, WhatsApp), Alphabet (YouTube, Google Search), Twitter/X (owned by Elon Musk, a politically controversial global figure), and Microsoft (LinkedIn). These corporations are subject to American law, including American national security legislation that can require them to provide the American government with access to data about their global users. They are not subject to Indian constitutional law in the sense of being constitutional actors whose actions are directly constrained by the Constitution of India.

This situation raises a constitutional question that is analogous to the question of external sovereignty that the Constitution addresses through its provisions on foreign relations and on the protection of sovereignty and integrity. Just as the Constitution protects India's political sovereignty against foreign military or political interference, a constitutional framework adequate for the information age should protect India's informational sovereignty: the right of Indian citizens to an information environment that is not subject to systematic manipulation by foreign governments, foreign corporations, or foreign political actors.

The specific risks include: the manipulation of Indian political discourse by foreign state actors, including documented Russian disinformation operations that have targeted South Asian democracies, Pakistani state media operations designed to inflame communal tensions in India, and Chinese state media operations targeting Indian public opinion on border disputes and economic relationships. These external disinformation operations are a genuine threat to Indian democratic sovereignty, and the constitutional framework has no adequate tools to address them.

But the constitutional response to external disinformation threats cannot be the one that the government has most frequently proposed: data localization requirements and the creation of a domestic internet infrastructure ("internet sovereignty") that gives the Indian government greater control over information flows. This approach, which is modeled on the Chinese "Great Firewall" concept and has been advocated by some government-aligned voices in India, is not a solution to the external disinformation problem. It is the transformation of an external manipulation problem into a domestic censorship infrastructure. A government that demands "information sovereignty" as the constitutional basis for controlling what its own citizens can read and say online is using the language of national security to describe the tools of authoritarianism.

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The genuine constitutional response to the external disinformation problem requires international cooperation rather than domestic censorship: the development of international frameworks for the attribution and suppression of state-sponsored disinformation campaigns, analogous to the international legal frameworks that address other forms of state interference in the internal affairs of sovereign states. This is constitutionally relevant because India's constitutional values, including the commitment to international peace and cooperation expressed in Article 51, provide the basis for Indian participation in these international frameworks.

6.2 Surveillance Infrastructure and the Constitutional Rights of Digital Citizens

The Indian state's surveillance infrastructure has expanded dramatically in the digital age, and much of this expansion has occurred in a constitutional vacuum: without adequate legal authorization, without effective judicial oversight, and without any constitutional framework that adequately addresses the rights of digital citizens to privacy in their online communications, movements, and activities.

The revelations about the Indian government's use of the Pegasus spyware, documented in the Pegasus Project investigation of 2021 in which a consortium of investigative outlets including The Wire in India participated, demonstrated that the Indian government had been using military-grade surveillance technology to monitor the communications of journalists, lawyers, opposition politicians, activists, and even judges. The Supreme Court's response, the appointment of a technical committee chaired by former Supreme Court judge R.V. Raveendran to investigate the allegations, ended inconclusively: the technical committee's report acknowledged that some of the phones examined showed evidence of attempted or successful Pegasus infection but could not definitively attribute the infection to the Indian government.

The constitutional implications of the Pegasus revelations are severe and go beyond the specific facts of individual surveillance cases. The fundamental constitutional right to privacy recognized in Puttaswamy, which the Court held to be intrinsic to personal liberty under Article 21, is violated by any surveillance of an individual's digital communications without prior judicial authorization. The constitutional requirement of judicial oversight of surveillance, which the Court had recognized even in the pre-Puttaswamy era in People's Union for Civil Liberties v. Union of India (1997), is systematically violated by the Indian government's surveillance practices.

The existing legal framework for surveillance, primarily the Indian Telegraph Act, 1885 (which authorized telephone interception) and the IT Act, 2000 (which authorized computer-related surveillance), is both constitutionally inadequate and practically obsolete. The Telegraph Act was designed for a world of copper wires and analog communications; applying it to the surveillance of encrypted digital communications over fiber-optic networks and satellite links requires interpretive gymnastics that cannot substitute for a modern, constitutionally grounded legal framework.

The constitutional framework for surveillance that India needs includes: a constitutional right to secure communications, including communications encrypted by end-to-end encryption, that cannot be compromised by the state without prior judicial authorization based on specific,

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individualized evidence of serious criminal activity; a prohibition on mass surveillance, which captures the communications of large numbers of individuals indiscriminately; a requirement that any surveillance authorized by judicial order be disclosed to the subject after the fact, once the investigation is concluded, to enable constitutional challenges; and independent oversight of the surveillance system by a constitutional body with the powers and resources to conduct genuine scrutiny.

6.3 The Aadhaar Ecosystem and the Constitutional Risks of Biometric Surveillance

The Aadhaar biometric identification system, which has enrolled over 1.3 billion Indian residents and is integrated into a vast range of government services and increasingly into private commercial services, represents the largest biometric database in human history. Its constitutional implications, which were addressed in the Supreme Court's five-judge judgment in K.S. Puttaswamy (Aadhaar) v. Union of India (2018), remain deeply contested and have been further complicated by subsequent developments in the Aadhaar ecosystem.

The 2018 Aadhaar judgment upheld the constitutional validity of the Aadhaar system as a whole while striking down or limiting several specific provisions, including the provision allowing private entities to use Aadhaar for verification, which the Court held was not justified by any compelling state interest under the proportionality test. Justice D.Y. Chandrachud, in dissent, argued much more broadly that the entire Aadhaar framework was unconstitutional because it created a system of pervasive state surveillance that was inconsistent with the right to privacy, that the Aadhaar Act had been passed as a money bill to circumvent the Rajya Sabha, and that the system's architecture of centralized biometric data collection created a structural risk of surveillance and exclusion that could not be justified by the legitimate state objective of preventing welfare leakage.

The majority's validation of Aadhaar has not resolved the constitutional concerns: the subsequent expansion of Aadhaar linkage requirements, the documented cases of biometric authentication failures that have excluded genuine beneficiaries from welfare entitlements (with deaths documented in several cases of individuals who died after being denied food because their biometric verification failed), and the integration of facial recognition technology with the Aadhaar database (in the Automated Multi-Modal Biometric Identification System, AMBIS, which several state police forces have deployed) have all raised constitutional concerns that go beyond the questions addressed in the 2018 judgment.

The constitutional concerns about facial recognition technology are particularly acute. Unlike fingerprint or iris biometrics, which require the active participation of the subject, facial recognition technology can identify and track individuals in public spaces without their knowledge or consent, using camera footage from CCTV networks, traffic cameras, or any other video capture device. The deployment of facial recognition-based surveillance in public spaces, which multiple Indian state police forces have done with no legal authorization beyond general police powers, transforms public space from a domain of anonymous civic life into a surveillance environment in which every movement of every individual can be tracked and recorded.

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A 2024 investigation by the Internet Freedom Foundation and the Internet Society documented the deployment of facial recognition technology at political rallies, protests, and public gatherings in several Indian states, with evidence that the technology was used to identify and subsequently monitor individuals who attended opposition political events. This is precisely the kind of surveillance that the right to privacy and the right to free political association under Article 19(1)(c) are designed to prevent, and its constitutional implications have not yet been addressed by any court.

The constitutional framework for biometric surveillance must include: a comprehensive data protection law (the Digital Personal Data Protection Act of 2023 is inadequate to address biometric surveillance, because its carve-outs for state security and law enforcement purposes are extremely broad); a prohibition on the deployment of facial recognition technology in public spaces without specific legislative authorization and judicial oversight; an independent Data Protection Authority with genuine constitutional independence and adequate powers of investigation and enforcement; and a constitutional right to anonymity in public spaces that prevents the transformation of the urban environment into a panopticon of continuous state surveillance.

CHAPTER SEVEN: THE CONSTITUTIONAL CRISIS OF MEDIA OWNERSHIP AND THE STRUCTURAL PREREQUISITES FOR A FREE PRESS

7.1 The Concentration of Media Ownership and the Death of Pluralism

The Indian media landscape in 2025 is characterized by a degree of ownership concentration that is, by any comparative standard, extraordinary and constitutionally alarming. A small number of corporate groups control a disproportionate share of the media market across multiple platforms, and the corporate interests of these groups are deeply intertwined with the political power of the state.

The Mukesh Ambani-led Reliance Industries group, through its media subsidiary Network18, controls a portfolio of news channels that spans multiple languages and platforms, including CNN-News18 (English), News18 India (Hindi), and regional news channels in Kannada, Bengali, Telugu, Urdu, and other languages. The Zee Entertainment group, which controls Zee News and a range of regional channels, has been through a period of corporate distress that has involved regulatory scrutiny by agencies associated with the government. The Times Group, which controls the Times of India newspaper, Times Now television channel, and a range of other media properties, has business interests in real estate, education, and radio broadcasting that create complex conflicts of interest with its journalism.

The constitutional problem of media ownership concentration is not simply that individual corporations own too many media outlets. It is that the concentration of ownership produces structural homogenization of political coverage: when a small number of corporate owners make editorial decisions for a large proportion of the national media landscape, and when those corporate owners have business interests that require political relationships with the government,

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the result is a media environment in which critical journalism, journalism that challenges the powerful in ways that may have political and therefore business consequences, is systematically under-resourced and systematically marginalized.

The constitutional response requires anti-concentration regulations with constitutional status: provisions that limit the proportion of the media market that any single owner can control, that prohibit the cross-ownership of media and other regulated industries in ways that create conflicts of interest, and that require transparency about the ultimate beneficial ownership of all licensed media entities. These regulations exist in the media regulatory frameworks of multiple European democracies and in Australia, and they are constitutionally grounded in the structural dimension of the free speech guarantee.

The Supreme Court's 1995 Cricket Association of Bengal judgment, which recognized the government's obligation to ensure pluralism in the broadcast media, provides the constitutional foundation for these anti-concentration regulations. The extension of this doctrine to print and digital media, and its elaboration into specific constitutional requirements for media ownership regulation, is the constitutional development that is needed.

7.2 The Political Economy of Investigative Journalism: Constitutional Threats and the Survival of Democratic Accountability

Investigative journalism, the form of journalism that is most essential to democratic accountability and most threatening to political power, is under existential constitutional and economic pressure in India in 2025. The economic model of commercial journalism, which historically cross-subsidized investigative reporting through the revenues from advertising and circulation, has been disrupted by the migration of advertising to digital platforms, leaving traditional media organizations with reduced revenues and under pressure to reduce the most expensive and most legally risky form of journalism.

The state's response to investigative journalism has become increasingly aggressive. The use of criminal law against investigative journalists, documented in detail in Chapter Three of this Part in the context of UAPA prosecutions, has been reinforced by the use of tax authority raids, enforcement directorate investigations, and customs and immigration harassment as tools of intimidation against news organizations whose reporting is politically inconvenient. The income tax raids on the Dainik Bhaskar and Bharat Samachar news groups in 2021, which occurred in the context of these groups' reporting on the BJP government's handling of the COVID crisis, were widely interpreted as political intimidation and led to significant changes in the coverage of these groups in the period following the raids.

The constitutional protection of investigative journalism requires, first, the recognition that freedom of the press has a distinct constitutional dimension from general freedom of speech: that the press performs a constitutionally specific function of democratic accountability that justifies special constitutional protections beyond those available to ordinary citizens. This recognition exists in American First Amendment jurisprudence, in the German Basic Law's guarantee of press freedom as a distinct right, and in the European Convention on Human Rights as interpreted by the European Court of Human Rights.

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Second, the constitutional protection of investigative journalism requires specific statutory protections: a journalist shield law that protects the confidentiality of sources, an anti-SLAPP (strategic lawsuit against public participation) framework that prevents the use of defamation suits as tools of intimidation against investigative reporting, and a whistleblower protection law that genuinely protects those who provide information to journalists about governmental or corporate wrongdoing.

Third, the constitutional protection of investigative journalism requires the protection of independent digital media outlets, which have become the primary home of investigative journalism in India as traditional media has been captured. Outlets including The Wire, Article 14, Newslaundry, The Caravan, Scroll, and The Quint have performed the investigative reporting function that the captured mainstream media has largely abandoned. These outlets have been targeted with criminal complaints, with UAPA investigations, with income tax raids, with coordinated harassment campaigns on social media, and with defamation suits. Their financial fragility makes them particularly vulnerable to these forms of intimidation.

A constitutional framework that genuinely protects press freedom must address the economic conditions of journalism as well as the legal protections. Public funding for journalism, through mechanisms that are constitutionally insulated from political direction, such as the independent media fund models operating in some Nordic countries and in Canada, can provide the economic foundation that allows investigative journalism to survive in an environment where commercial revenue is insufficient. This is not a subsidy to political journalism but a constitutional investment in the infrastructure of democratic accountability.

7.3 The Right to Information and Its Systematic Subversion

The Right to Information Act, 2005, which established a statutory right of citizens to access information held by public authorities, was one of the most significant democratic reforms of the post-liberalization period in India. Its constitutional grounding in Article 19(1)(a)'s right to receive and impart information, recognized in the Supreme Court's Raj Narain judgment, gives it a constitutional status that goes beyond ordinary legislation.

The RTI Act has been, since its enactment, both a transformative tool for democratic accountability and the target of systematic subversion by every government that has found it threatening. The attempts to subvert the RTI have taken several forms: the amendment of the Act in 2019 to reduce the security of tenure of the Chief Information Commissioners and Information Commissioners, effectively making them removable by the government and reducing their independence; the systematic practice of governments at all levels of refusing to respond to RTI applications within the statutory timeframe, or providing incomplete and evasive responses; the use of exemption provisions, particularly the national security and cabinet papers exemptions, to withhold information that is merely politically embarrassing rather than genuinely sensitive; and the failure to adequately staff, resource, and empower the Information Commission structure, resulting in enormous backlogs that make effective RTI enforcement practically impossible in many states.

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The constitutional remedy for the subversion of the RTI requires, first, the constitutional entrenchment of the right to information as a fundamental right, with the Information Commission structure given constitutional status analogous to the Election Commission. Second, the amendment of the exemption provisions to restrict their scope to information that is genuinely sensitive, with independent judicial review of claims of exemption. Third, the establishment of a genuine proactive disclosure regime, in which the most important categories of government information are published automatically rather than requiring individual RTI applications. Fourth, the criminal accountability of public officials who willfully delay, withhold, or falsify responses to RTI applications.

CHAPTER EIGHT: THEORETICAL FRAMEWORKS FOR DIGITAL CONSTITUTIONAL DEMOCRACY

8.1 Deliberative Democracy and the Constitutional Conditions of Democratic Legitimacy

The most important theoretical framework for understanding the constitutional crisis of the digital public sphere is deliberative democratic theory, developed by Jurgen Habermas in his two-volume work The Theory of Communicative Action and synthesized in Between Facts and Norms (1992). Deliberative democracy holds that democratic legitimacy derives not merely from the formal procedures of majority rule but from the quality of the deliberative process through which democratic decisions are made: a process characterized by the inclusion of all affected parties, the exchange of reasons that are publicly accessible and publicly challenged, the willingness of participants to be moved by better arguments, and the orientation of the deliberative process toward the common good rather than merely the aggregation of private interests.

The constitutional significance of deliberative democracy theory for the Indian public sphere crisis is this: a constitutional democracy that maintains the formal procedures of majority rule while systematically destroying the conditions of deliberative democracy is not a genuine democracy. If the information environment in which citizens form their political views is systematically distorted by disinformation, if critical voices are suppressed by criminal prosecution and harassment, if the dominant media serves propaganda rather than truth, if political communication is dominated by the manufactured output of funded IT cells rather than by genuine citizen deliberation, then the elections held in this environment produce results that are procedurally valid but substantively illegitimate, in the sense that they do not reflect the considered preferences of genuinely informed citizens.

This deliberative democratic critique of the Indian constitutional order goes beyond the conventional critique of electoral manipulation (gerrymandering, voter suppression, ballot stuffing) to a deeper critique of the communicative conditions of democratic participation. It argues that even formally correct elections, held under the supervision of an independent Election Commission, can produce constitutionally illegitimate outcomes if the public sphere in which voter preferences are formed has been systematically corrupted.

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The constitutional implications of this argument are radical. They suggest that the constitutional right to free and fair elections, which the Supreme Court has recognized as part of the basic structure of the Constitution, must be interpreted to include not merely procedural fairness on election day but substantive fairness in the communicative environment throughout the electoral cycle. A systematic campaign of disinformation that shapes voter preferences before the election is as much an assault on the constitutional right to free and fair elections as ballot stuffing on election day.

This interpretation of the constitutional right to free and fair elections, if accepted by the Supreme Court, would provide the constitutional foundation for a comprehensive regulation of the digital information environment in the democratic interest. It would ground the regulation of platform algorithms, the prohibition of coordinated inauthentic behavior, the mandatory transparency of paid political communication, and the protection of independent media, in the constitutional right to democratic self-governance rather than in statutory policy discretion.

8.2 Critical Theory and the Constitutional Analysis of Media Power

The critical theory tradition, represented in its most direct application to media and democracy by the Frankfurt School scholars Max Horkheimer, Theodor Adorno, and Herbert Marcuse, and in its most empirically grounded form by Herman and Chomsky's propaganda model, provides a necessary complement to the deliberative democratic theoretical framework.

Horkheimer and Adorno's analysis, in Dialectic of Enlightenment (1944), of the "culture industry" as a mechanism for the manufacture of passive, conformist consumers rather than critically thinking citizens, anticipated the contemporary analysis of social media platforms as engagement maximization machines that produce passive consumers of outrage-inducing content rather than active deliberators in the democratic public sphere. The culture industry analysis locates the problem not in individual bad faith but in the structural logic of capitalist cultural production: the same structural logic that makes sensationalism more profitable than journalism and entertainment more marketable than enlightenment.

Herman and Chomsky's propaganda model, developed in Manufacturing Consent (1988) through analysis of the American commercial media, identifies five "filters" through which the news product passes before reaching citizens: the size and profit orientation of media firms, the dependence on advertising revenue, the reliance on establishment sources, the threat of "flak" (organized criticism and legal threats from powerful interests), and the ideological framework of anti-communism (or, in its contemporary form, "anti-terrorism" or "anti-extremism"). These filters systematically bias commercial media toward the perspectives of the powerful and away from the perspectives of those who challenge power.

The propaganda model applies with equal or greater force to the Indian commercial media landscape of 2025. The five filters are all operative: the dominant media are owned by large corporate groups whose business interests require political relationships; they are dependent on government advertising; they rely on government sources for the majority of their political news; they face the threat of regulatory action, tax raids, and criminal prosecution if they are too

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critical; and they operate within an ideological framework that equates support for the government with "nationalism" and equates criticism with "anti-national" activity.

The constitutional implication of the critical theory analysis is that the structural capture of commercial media by political and economic power is not an aberration that can be corrected by better editorial ethics or individual journalistic courage. It is a systemic consequence of the structural logic of commercial media in a political environment where media owners need political protection and political actors need media support. Correcting this structural problem requires structural constitutional intervention: media ownership regulation, public media funding, anti-monopoly provisions, and constitutional protection for media workers against the economic pressure that forces them into political compliance.

8.3 Republican Constitutional Theory and the Information Environment

Philip Pettit's republican political theory, which grounds democratic legitimacy in the concept of non-domination rather than merely in formal self-governance, provides another valuable theoretical framework for the constitutional analysis of the information environment crisis.

For Pettit, freedom consists in the absence of domination: the condition of being able to make choices without being subject to the arbitrary will of another. Domination does not require the actual exercise of power: it is sufficient that one is subject to a structure of power that could be exercised arbitrarily against oneself. Citizens are dominated when they are subject to a power that can arbitrarily shape their lives, even if that power chooses, in the current moment, not to do so.

In the context of the information environment, the republican theory of non-domination suggests that citizens who are subject to a state and corporate apparatus that can arbitrarily shape their information environment, that can determine what they see and do not see, that can amplify some voices and suppress others, that can manufacture the appearance of popular opinion, are dominated in the republican sense even if the apparatus chooses, in the current moment, to use these powers moderately.

The constitutional implication of the republican analysis is that the appropriate response to information environment domination is not merely to restrain the current exercise of information power but to constitutionally restructure the information environment so that citizens are not subject to this form of domination at all. This requires constitutional rules that prevent the concentration of information power, that guarantee citizens access to diverse and independent information sources, that protect citizens against algorithmic manipulation of their information environments without their knowledge and consent, and that create constitutional accountability for the use of information power in ways that compromise citizens' capacity for autonomous political judgment.

The republican constitutional framework thus provides a principled basis for the comprehensive structural regulation of the information environment that deliberative democratic theory recommends: not merely as a policy preference but as a constitutional obligation arising from the core constitutional commitment to the non-domination of citizens.

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CHAPTER NINE: THE POLITICAL ECONOMY OF CONSTITUTIONAL REFORM IN THE INFORMATION AGE

9.1 Why the Existing Political System Cannot Reform the Information Environment

The constitutional crisis of the Indian public sphere is distinguished from the other constitutional crises analyzed in this textbook by a peculiar political economy problem: the political actors who have the constitutional authority to implement the necessary reforms are precisely the actors who benefit most from the current dysfunction of the information environment. The ruling party's sophisticated IT infrastructure, its command of the dominant broadcast media through ownership and advertising relationships, and its deployment of disinformation and intimidation as tools of political management are all sources of structural political advantage that the party has no rational incentive to surrender.

This is not a simple story of party-political self-interest. The structural capture of the information environment by political power is a phenomenon that predates the BJP's arrival in power and that every party has practiced in ways consistent with its resources and capabilities. The Congress party, when it held power, used the government's broadcasting monopoly before liberalization as a political tool, used government advertising to reward friendly media and punish critical ones, and deployed its own networks of political communication that served its interests rather than citizens'. Regional parties in states where they hold power engage in the same practices. The difference between the current situation and earlier periods is one of scale, sophistication, and the comprehensiveness with which the digital revolution has been exploited for political communication and manipulation.

The political economy problem means that constitutional reform of the information environment cannot come primarily from the initiative of the ruling party or from the parliamentary majority it commands. It must come from three sources: from the judiciary, through the development of constitutional doctrine that constrains the use of information power in ways that violate fundamental rights; from civil society, through the exercise of the democratic pressure that the compromised public sphere still permits; and from international pressure, through the development of international standards for democratic information governance that create accountability for democratic backsliding in the digital domain.

The judiciary's role in this process is both important and limited. Important, because the constitutional tools for addressing specific instances of information power abuse (the misuse of UAPA against journalists, the government's demand for platform traceability, the surveillance of citizens through Pegasus, the subversion of the RTI through political interference with Information Commissioners) are available in the existing constitutional framework if courts are willing to use them. Limited, because the structural problems of algorithmic amplification, media ownership concentration, and state capture of public broadcasting are not amenable to judicial remedy through individual case adjudication: they require comprehensive structural regulation that only a politically committed legislature can enact.

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9.2 Civil Society, Social Movements, and the Constitutional Struggle for the Public Sphere

The historical evidence from other democracies that have confronted similar crises of the public sphere suggests that constitutional reform of the information environment requires, above all, the organized political engagement of citizens who understand the stakes. The media reform movements in the United States in the early twentieth century, which produced the regulatory framework for radio and television broadcasting, were driven by civic organizations, labor unions, education associations, and religious communities who understood that the emerging broadcast media would shape American democratic culture and who organized politically to demand that it serve the public interest.

In India, the civil society organizations that are working to document, analyze, and challenge the constitutional crisis of the public sphere, including the Internet Freedom Foundation, the Editors Guild of India, the Network of Women in Media, the Press Freedom Foundation of India, and the community of constitutional scholars and journalists who maintain the record of press freedom violations, represent the seeds of a broader constitutional movement for democratic communication. Their work is essential, but it requires political organization and popular engagement at a scale that transforms from a specialized concern of media professionals and legal scholars into a broad democratic demand.

The constitutional struggles over the IT Rules, over the RTI, over UAPA prosecutions of journalists, and over the surveillance of citizens provide concrete mobilization points around which this broader movement can be organized. Each of these struggles connects the specific constitutional question to the broader democratic demand for a public sphere that serves citizens rather than power.

The student movements of 2019-2020, which mobilized millions of young Indians against the Citizenship Amendment Act and the National Register of Citizens in a political mobilization that extensively used digital platforms for organization and communication while also contending with the state's surveillance and suppression of digital dissent, demonstrated both the potential and the fragility of digital political organization in the current information environment. The eventual suppression of these movements, through a combination of UAPA prosecutions, internet shutdowns, and the COVID-19 pandemic that provided a legitimate public health justification for restrictions on physical assembly, illustrated the limits of digital organizing in an environment where the state controls the information infrastructure.

Constitutional reforms that protect the digital public sphere are therefore not only an end in themselves but a precondition for the effectiveness of all other democratic struggles. A civil society that cannot organize effectively because its communications are surveilled, its voices suppressed by coordinated harassment, its platforms algorithmically starved of reach, and its leaders targeted with criminal prosecution is a civil society that cannot effectively advocate for any of the other constitutional reforms that this textbook has argued are necessary.

9.3 International Constitutional Standards and the Comparative Framework

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The development of international constitutional standards for the regulation of the digital information environment has accelerated significantly since 2022, driven by the EU's Digital Services Act, the Council of Europe's recommendations on platform governance, the work of the UN Special Rapporteur on Freedom of Expression (most recently Frank La Rue and then David Kaye) on platform regulation, and the development of the Freedom Online Coalition's principles for internet freedom.

India is a signatory to multiple international human rights instruments that are relevant to the digital public sphere crisis, including the International Covenant on Civil and Political Rights, which protects freedom of expression including in digital contexts, the International Covenant on Economic, Social and Cultural Rights, and the UNESCO recommendations on the ethics of artificial intelligence. India's compliance with these international obligations in the context of its digital governance is increasingly scrutinized by the UN Human Rights system and by the treaty bodies that monitor state compliance with international human rights instruments.

The constitutional significance of India's international human rights obligations is recognized by the Supreme Court through the principle that constitutional provisions should be interpreted harmoniously with India's international obligations. The Court's recognition of this principle in Vishaka v. State of Rajasthan and in subsequent cases provides a constitutional foundation for importing international standards of digital rights protection into the domestic constitutional framework.

The 2024 Global Digital Compact, adopted at the UN Summit of the Future in September 2024, establishes international principles for digital governance that include commitments to internet freedom, to the protection of human rights online, to the promotion of digital inclusion, and to the prevention of the weaponization of digital platforms for political manipulation. India's signature on this document creates political and legal accountability for its domestic digital governance practices that can be invoked in both national and international forums.

CHAPTER TEN: TOWARD A CONSTITUTIONAL FRAMEWORK FOR THE DEMOCRATIC PUBLIC SPHERE

10.1 Specific Constitutional Provisions for the Information Age

The constitutional reform of the Indian public sphere requires both short-term statutory reforms and long-term constitutional amendments. This section outlines the constitutional provisions that would constitute an adequate framework for the democratic information environment of the twenty-first century.

The first necessary constitutional provision is an explicit guarantee of the right to a free, independent, and pluralistic media environment. This would be added as a new clause in Article 19, or in a new Article 19A, stating that every citizen has the right to access information through a media environment that is free from state control, that is characterized by a plurality of ownership and editorial perspectives, and that is not subject to systematic manipulation by

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political or commercial interests. The corresponding obligation on the state would be to ensure, through appropriate legislation, that the media environment meets these constitutional standards.

The second necessary provision is a constitutional prohibition on the concentration of media ownership beyond specified limits, with the specific limits to be defined by Parliament but subject to constitutional minimum standards: no single owner may control more than a specified percentage of total media market, no owner of other regulated industries may own news media that covers those industries, and all media ownership must be fully transparent and publicly registered.

The third necessary provision is a constitutional right to encrypted communication, stating that every person has the right to communicate through encrypted channels without mandatory disclosure of content or of encryption keys to the state or to any other party, subject only to a judicial order issued on the basis of specific, individualized evidence of serious criminal activity.

The fourth necessary provision is a constitutional prohibition on mass surveillance, stating that the state may not conduct surveillance of the communications, movements, or associations of persons without specific, individualized judicial authorization, and that any general or bulk collection of personal communications data is unconstitutional.

The fifth necessary provision is a constitutional requirement for algorithmic transparency, stating that any entity providing algorithmic recommendation services to more than a specified number of users must make those services auditable by an independent constitutional body, must provide users with meaningful choices about algorithmic curation of their information environment, and must report publicly on the systemic effects of their recommendation algorithms on democratic discourse.

The sixth necessary provision is a constitutional guarantee of the independence of public broadcasting, entrenching in the Constitution the principles of editorial independence, political neutrality, and public service that the Prasar Bharati Act intended but failed to deliver, and providing constitutional security of tenure and independent funding for the public broadcasting institution.

The seventh necessary provision is a constitutional right to proactive information disclosure by the state, requiring that specified categories of government information be published automatically and in accessible form, without requiring citizens to file individual RTI applications, and constitutional entrenchment of the Information Commission structure with security of tenure and adequate resources.

The eighth necessary provision is a constitutional right to participate in digital public life without systematic algorithmic discrimination, stating that no person shall be systematically denied the ability to communicate through dominant digital platforms on the basis of political viewpoint, religious belief, caste identity, gender, or other protected characteristics, and that platforms providing services to more than a specified number of users must not engage in systematic political viewpoint discrimination.

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10.2 The Independent Media Regulation Authority: A Constitutional Proposal

The effective implementation of the constitutional provisions outlined in the previous section requires an independent regulatory authority with constitutional status: an authority that is created by the Constitution rather than by ordinary legislation, that is constitutionally insulated from political direction, and that has adequate powers, resources, and expertise to regulate the complex and rapidly evolving digital media environment.

The constitutional model for this authority is the Election Commission: an independent constitutional body, established by Article 324, whose members have security of tenure, whose decisions are not subject to political override, and whose authority is directly grounded in the constitutional text. The authority of the Election Commission over electoral matters is constitutional rather than statutory, making it much more difficult for any government to undermine its independence through ordinary legislation.

An Independent Media and Digital Rights Authority, established by constitutional amendment, would have jurisdiction over: the licensing and regulation of broadcast media, with authority to enforce ownership concentration limits and editorial independence requirements; the regulation of Very Large Online Platforms in respect of their effects on democratic discourse, with authority to require audits of recommendation algorithms and to order mitigation measures for identified risks; the enforcement of the right to proactive information disclosure and the right of access to information under Article 19; the protection of journalists' rights, including the protection of confidential sources; and the investigation and adjudication of complaints of systematic political manipulation of the information environment.

The composition of this authority, and the process of appointment to it, would need to be designed with care to ensure genuine independence. The model of the BBC's appointment process, in which an independent appointments panel nominates candidates and the final appointments are made by a formal executive process but are bound by the panel's recommendations, is one model. The model of some European data protection authorities, which are governed by independent boards with staggered terms and appointed by different branches of government to prevent political dominance, is another.

The critical constitutional requirement is that no single political actor, and specifically not the government of the day, can control the appointments process in a way that allows the stacking of the authority with politically compliant members. The history of Indian constitutional bodies, from the Information Commission to the National Human Rights Commission to Prasar Bharati, demonstrates that statutory independence without constitutional entrenchment of appointment processes is insufficient to maintain genuine independence in an environment of aggressive executive aggrandizement.

10.3 Digital Constitutional Literacy and the Education Imperative

The constitutional reform of the information environment is necessary but not sufficient for the restoration of the democratic public sphere. A constitutional framework that creates the structural conditions for democratic communication can be made effective only if citizens have the

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literacy, the critical capacity, and the civic culture to use those conditions for genuine democratic deliberation rather than for the consumption of algorithmically optimized entertainment dressed as political information.

The crisis of digital constitutional literacy in India is profound. Research by the Reuters Institute's Digital News Report, the Misinformation Combat Alliance, and multiple academic studies has consistently found that Indian social media users are among the most susceptible to political disinformation in the world, with high rates of sharing of unverified information, limited use of fact-checking resources, and low levels of awareness about the algorithmic mechanisms that shape their information diet.

This digital literacy crisis has constitutional implications. The right to meaningful democratic participation, which the Constitution guarantees through the right to vote, the right to free speech, and the right to information, is exercised effectively only by citizens who have the capacity to critically evaluate the information they receive, to distinguish between propaganda and journalism, to recognize coordinated inauthentic behavior, and to access information from diverse sources.

The constitutional obligation to ensure this capacity falls on the state through its constitutional responsibility for education. The fundamental right to education under Article 21A, which was constitutionalized by the Eighty-Sixth Amendment and given statutory form in the Right to Education Act, must be interpreted to include the right to an education that prepares citizens for effective participation in the digital democratic public sphere. This means education in media literacy, in critical thinking, in the evaluation of information sources, in the recognition of algorithmic curation and its effects, and in the constitutional rights and responsibilities of digital citizens.

The curriculum reform required to deliver this digital constitutional education is significant but not impossibly ambitious. Multiple countries, including Finland, Estonia, and Canada, have developed and implemented media literacy curricula that are demonstrably effective in improving citizens' ability to navigate the digital information environment. The constitutional mandate for this reform in India is provided by the right to education, and the political mandate must come from the recognition that a democratic public sphere cannot function when the majority of citizens lack the capacity to participate in it critically.

CHAPTER ELEVEN: THE MANUFACTURED NATIONALISM CRISIS: HOW THE INFORMATION ENVIRONMENT MAKES AUTHORITARIANISM POSSIBLE

11.1 Hindu Nationalism and the Digital Infrastructure of Majoritarian Sentiment

The preceding chapters have analyzed the constitutional dimensions of the digital information environment primarily in structural and procedural terms: the inadequacy of the constitutional free speech framework, the structural capture of media by political power, the algorithmic amplification of harmful content, and the surveillance of citizens and critics. This chapter

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addresses the substantive political content of the information environment crisis: the specific political project for which the manufactured public sphere has been deployed, and the constitutional implications of that project for the democratic and secular character of the Indian state.

The constitutional character of the Indian state, as established in the Preamble, is that of a "Sovereign Socialist Secular Democratic Republic." The secular character of the state, which means the equal respect and equal treatment of all religious communities and the exclusion of religion from the exercise of state power, has been identified by the Supreme Court as part of the basic structure of the Constitution. The democratic character, which requires not merely formal electoral procedures but substantive conditions of democratic deliberation and pluralistic political competition, has been similarly identified as basic structure.

Both the secular character and the democratic character of the constitutional state are threatened, and this textbook argues, actively undermined, by the political project of Hindu nationalism as it has been implemented through the information infrastructure analyzed in the preceding chapters.

The information infrastructure of Hindu nationalism, which includes the media operations of the RSS, the digital communication networks of the BJP's IT cell and affiliated organizations, the social media presence of thousands of coordinated accounts amplifying Hindu nationalist messaging, and the sympathetic coverage of Hindu nationalist politics by the captured broadcast media, has produced a systematic distortion of the Indian public sphere in the direction of religious majoritarianism.

The constitutional implications are direct. The systematic amplification, through the information infrastructure of Hindu nationalism, of content that portrays Muslims as enemies of the nation, that frames political competition as a conflict between Hindu India and its enemies, that promotes the idea that India is a "Hindu Rashtra" (Hindu nation) rather than a secular democratic republic, and that characterizes constitutional rights organizations, opposition parties, and critical media as anti-national, is a systematic assault on the constitutional character of the Indian state.

This assault is accomplished not through formal constitutional amendment, which would require supermajorities in Parliament and ratification by state legislatures, but through the transformation of the cultural and communicative environment in which the Constitution operates. If the majority of the voting public can be persuaded, through a systematic information campaign, that India is or should be a Hindu nation rather than a secular democratic republic, and that parties and candidates who challenge this vision are threats to national identity, then elections held under formally correct constitutional procedures will produce results that are constitutionally transformative in their implications, even without formal constitutional amendment.

This is what scholars of democratic backsliding call "constitutional capture by extralegal means": the transformation of the constitutional order through the manipulation of the political and cultural environment rather than through the formal amendment procedures that the Constitution requires.

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The constitutional remedy requires, first, recognition that the secular and democratic character of the constitutional state creates positive obligations on the state to maintain the communicative conditions under which citizens can exercise their constitutional rights as members of a secular democratic polity, not as members of a religious community subject to majoritarian power. Second, it requires enforcement of the existing constitutional provisions that prohibit the use of religion in electoral politics (Sections 123 of the Representation of the People Act, which prohibits the appeal to religion in elections, must be enforced rigorously against parties and candidates that make communal appeals). Third, it requires the institutional independence of broadcast media and the prohibition of content that systematically portrays religious minorities as threats to the nation.

11.2 Internet Shutdowns as Constitutional Weapons Against Democratic Deliberation

India is the world's most frequent user of internet shutdowns as a tool of political and social management, and this record is a direct measure of the constitutional failure to protect the communicative conditions of democratic participation.

According to the Internet Shutdown Tracker maintained by the Software Freedom Law Center, India has imposed more internet shutdowns than any other country in the world for each year since 2012. In 2023, India imposed 116 documented internet shutdowns. In 2024, the number remained above 100. These shutdowns occur in a variety of contexts: during communal violence (where the justification is the prevention of the spread of inflammatory content), during protests and political demonstrations (where the justification is the prevention of "organized agitation"), during examinations (where the justification is the prevention of cheating), and during political events including elections (where the justification is the prevention of unspecified threats).

The constitutional challenge to internet shutdowns has been addressed by the Supreme Court in Anuradha Bhasin v. Union of India (2020), in which the Court held that internet access is constitutionally protected as an exercise of the freedom of speech and expression under Article 19(1)(a) and of the right to carry on trade or business under Article 19(1)(g), that indefinite shutdowns are disproportionate and unconstitutional, and that shutdown orders must be published (so that affected citizens and businesses know the basis and scope of the restriction) and must be subject to review by a government committee.

The Anuradha Bhasin judgment was an important constitutional development, but its practical effect on the frequency of internet shutdowns has been limited. The publication requirement has often been honored in the breach: shutdown orders in some states have been published with significant delay or not at all. The government review committee requirement has not prevented the continuation of shutdowns that meet the low threshold of "public order" justification. And the shutdown of telecommunications services rather than internet access specifically has been used as a technical workaround to the internet-specific restrictions of the judgment.

The constitutional inadequacy of the Anuradha Bhasin framework reflects a deeper problem: the Court applied the general framework of reasonable restrictions under Article 19(2) to internet shutdowns, treating them as ordinary restrictions on speech that must be proportionate and narrowly tailored. But internet shutdowns are not ordinary restrictions on speech: they are the

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total elimination of the primary medium of communication, commerce, governance, and democratic participation for the population affected. Their constitutional treatment must reflect their qualitatively different and more severe impact on constitutional rights.

A constitutional framework adequate for the internet age must treat internet access as a constitutional right that can be restricted only under the most exceptional circumstances, with the highest standards of proportionality and necessity, and with immediate judicial review of any restriction order. The Kenyan Supreme Court's approach in the 2024 election-related internet freedom cases, which struck down government orders restricting internet access during the election period as violations of the constitutional right to freedom of expression, offers a model for the constitutional treatment of internet shutdowns as severe constitutional restrictions requiring exceptional justification.

CHAPTER TWELVE: THE CONSTITUTIONAL MOMENT AND THE PATH FORWARD

12.1 The Digital Constitutional Moment: Crisis and Opportunity

This textbook has argued, across sixteen previous Parts and now in this seventeenth Part, that India is living through a constitutional moment: a period of constitutional crisis that is simultaneously a period of constitutional opportunity, in which the failures of the existing constitutional order are so severe and so visible that the political and social conditions for fundamental constitutional transformation may be ripening.

The constitutional crisis of the digital public sphere adds an urgent dimension to this constitutional moment. The manipulation of the information environment, the systematic destruction of the conditions of democratic deliberation, and the deployment of digital infrastructure for the manufacture of authoritarian consent, are not merely additional constitutional problems to be added to the long list analyzed in previous Parts. They are, in an important sense, the constitutional problem that makes all other constitutional problems more difficult to address, because they undermine the communicative capacity of citizens and civil society to understand the constitutional crisis, to deliberate about its dimensions, and to organize politically for constitutional remedy.

A civil society that does not understand the constitutional crisis cannot organize to address it. A public that has been persuaded, through a manufactured information environment, that its constitutional rights violations are justified by national security, by religious identity, or by the personal authority of a charismatic leader, will not demand constitutional reform. The destruction of the democratic public sphere is, in this sense, the meta-constitutional problem: the constitutional problem that must be addressed before, or simultaneously with, all the other constitutional problems.

The constitutional moment, however, also offers opportunity. The combination of the Supreme Court's increasingly assertive engagement with questions of democratic backsliding (illustrated

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by the Anuradha Bhasin, Puttaswamy, and Association for Democratic Reforms judgments), the growing civil society movement for digital rights (illustrated by the Internet Freedom Foundation's litigation, the Editors Guild's advocacy, and the growing community of constitutional scholars working on digital rights), and the increasing international attention to India's democratic backsliding (illustrated by the V-Dem Institute's reclassification of India as an "electoral autocracy" and by the US State Department's regular reporting on press freedom violations in India), creates the conditions for a political and legal struggle that could produce significant constitutional advances.

12.2 The Minimum Constitutional Program for Democratic Communication

In the immediate term, before comprehensive constitutional amendment is politically possible, there is a minimum constitutional program for the protection of democratic communication that can be pursued through judicial adjudication, legislative initiative, and civic organizing.

The judicial component of this minimum program includes: the rigorous application of the Shreya Singhal doctrine to all criminal restrictions on digital speech, with the burden of proof firmly on the state to demonstrate that the restricted speech falls within the incitement exception; the extension of the right to information doctrine to require disclosure of organized political communication campaigns; the constitutional invalidation of internet shutdown orders that do not meet the highest standard of necessity and proportionality; and the constitutional protection of encrypted communications against state demands for traceability or decryption without specific judicial authorization.

The legislative component includes: the amendment of the IT Rules to remove the government-constituted appellate committee that effectively gives the state a mechanism for ordering platform content removal; the enactment of an anti-SLAPP law protecting journalists and civil society organizations against defamation suits used as tools of intimidation; the strengthening of the Prasar Bharati Act to provide genuine editorial independence with constitutional grounding; the enactment of a comprehensive surveillance law that requires judicial authorization for all digital surveillance and prohibits bulk collection of communications data; and the reform of the Information Commission structure to restore security of tenure and genuine independence.

The civic component includes: the sustained documentation and public reporting of constitutional violations in the information environment, by civil society organizations, investigative journalists, and academic researchers; the international engagement of constitutional advocates who can bring India's digital rights situation before international human rights bodies; the education of citizens about their constitutional rights in the digital environment and about the mechanisms of digital manipulation; and the building of coalitions across civil society, journalism, academia, and legal communities around the constitutional agenda for democratic communication.

12.3 The Long-Term Constitutional Vision: A Communication Clause for a New Republic

The long-term constitutional vision for the democratic public sphere in India requires what this textbook calls a "communication clause" for a new constitutional settlement: a comprehensive

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set of constitutional provisions that establish, with the clarity and enforceability of a fundamental rights provision, the constitutional framework for democratic communication in the digital age.

This communication clause would guarantee, in a new Article 19A or in a reconstituted Part III of a new Constitution: the right to access a free, independent, and pluralistic media environment; the right to encrypted and private communication; the right to be free from mass surveillance; the right to an information environment not subject to systematic algorithmic manipulation without consent; the right to proactive information disclosure by the state; the right to participate in digital public life without systematic discrimination; and the obligation of the state to create and maintain the institutional infrastructure, including an independent media authority, a genuinely independent public broadcaster, a constitutionally grounded right to information regime, and a digital rights protection framework, that makes these rights effective.

This communication clause would also establish constitutional obligations for private platforms operating at scale in India: obligations of transparency, of algorithmic accountability, of non-discrimination, and of contribution to the democratic information commons. These obligations on private actors, grounded in the constitutional recognition that dominant digital platforms are part of the constitutional infrastructure of democratic communication and therefore subject to constitutional obligations analogous to those of other constitutional actors, would represent a significant extension of constitutional doctrine but one that is theoretically grounded in the existing framework of constitutional obligations recognized by the Supreme Court for the exercise of public functions by private actors.

The communication clause would be the constitutional infrastructure for a genuinely democratic public sphere: one in which every citizen, regardless of class, caste, gender, religion, language, or region, can participate as a genuine member of the constitutional community, with equal access to information, equal capacity to be heard, equal protection against manipulation, and equal ability to hold power to account.

That is the constitutional vision for democratic communication. That is the necessary infrastructure for all the other constitutional visions that this textbook has articulated. That is the work that cannot wait.

CONCLUSION TO PART SEVENTEEN: THE REPUBLIC OF MANUFACTURED CONSENT AND THE STRUGGLE FOR COMMUNICATIVE FREEDOM

Part Seventeen has traced the constitutional crisis of the Indian public sphere across its multiple dimensions: the inadequacy of the constitutional free speech framework for the digital age, the structural capture of broadcast media by political power, the weaponization of WhatsApp for political disinformation, the algorithmic amplification of content that destroys democratic deliberation, the organized inauthentic behavior of IT cells and troll armies, the criminal prosecution of journalists and civil society voices through UAPA and related instruments, the surveillance of critics through Pegasus and the Aadhaar ecosystem, the suppression of encrypted communications, the systematic subversion of the RTI, the deployment of internet shutdowns as

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political weapons, and the use of the manufactured information environment as the infrastructure for a project of Hindu nationalist constitutional transformation.

The analysis has drawn on the theoretical frameworks of deliberative democracy, critical theory, republican political philosophy, and digital constitutionalism to argue that the destruction of the democratic public sphere is not merely a political problem but a constitutional problem of the first magnitude: it is the destruction of the communicative foundation of constitutional legitimacy, the dismantling of the conditions under which democratic self-governance is possible, and the transformation of a constitutional republic into a republic of manufactured consent.

But the analysis has also identified the resources for constitutional resistance and constitutional reconstruction: the judicial tools available in the existing constitutional framework, the civil society movements that are documenting and challenging the destruction of the public sphere, the international frameworks of digital rights and platform governance that provide comparative models for reform, and the constitutional vision of a communication clause that would provide an adequate constitutional foundation for democratic communication in the twenty-first century.

The Preamble of the Constitution of India promises its citizens justice, liberty, equality, and fraternity. The promise of liberty includes the liberty to think, to speak, to read, to receive, and to communicate information without the systematic distortion, manipulation, suppression, and surveillance that the current information environment imposes. The promise of equality includes equal access to the information environment and equal capacity to participate in democratic deliberation, regardless of class or power. The promise of justice includes the justice of governance that is genuinely accountable to an informed citizenry rather than to a citizenry whose information has been manufactured to secure its consent. And the promise of fraternity includes the fraternity of a public sphere in which all citizens, across the divisions of religion, caste, language, and region, can engage as equal members of a democratic community.

The manufactured republic is the antithesis of all of these promises. The communicatively free republic is their fulfillment. The constitutional work of transforming the first into the second is the most urgent constitutional work of the current historical moment.

The next Part of this textbook will examine the constitutional dimensions of economic inequality: the structural relationship between the constitutional order and India's extraordinary concentration of wealth, the constitutional tools for redistribution that the existing framework provides or fails to provide, the connections between economic inequality and the democratic deficits analyzed throughout this textbook, and the constitutional vision of an economy organized in accordance with the distributive justice principles that the Constitution's founding documents promised but the constitutional order has systematically failed to deliver.

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End of Part Seventeen.

Part Eighteen will examine the constitutional dimensions of economic inequality, wealth concentration, labor rights, and the distributive justice framework of the Constitution: analyzing how the existing constitutional order has permitted and in some respects enabled the extraordinary concentration of wealth in India, how the non-justiciable directive principles that were supposed to create economic equality have become instruments of rhetorical cover for structural inequality, and what a genuinely just constitutional economic order would look like, drawing on the theories of Rawls, Dworkin, Sen, Piketty, and Ambedkar's own economic constitutionalism. It will examine specifically the constitutional relationship between caste and economic inequality, the land rights framework, labor constitutional rights, and the regulatory capture that has converted the constitutional machinery of economic governance into an instrument of elite accumulation.

This Part was researched and written with reference to the most current developments in Indian constitutional law, platform governance, media freedom, digital rights law, and the political sociology of information environments as of April 2026. The field is changing with extraordinary speed, and readers are encouraged to consult the most recent judgments of the Supreme Court in the IT Rules litigation, the most recent reports of the Internet Freedom Foundation and the Press Freedom Foundation of India, and the most recent academic work in the fields of digital constitutionalism and platform governance for developments occurring after this research was completed.

PART EIGHTEEN

THE CONSTITUTIONAL CRISIS OF DEMOCRACY: POWER, CORRUPTION, VICTIMIZATION, AND THE IMPERATIVE OF TOTAL REFORM

PREFACE TO PART EIGHTEEN

This part of the textbook occupies a uniquely urgent place in the larger edifice of constitutional commentary that this series has been building across seventeen earlier parts. What has been constructed through the preceding seventeen parts is a layered understanding of the Constitution of India not as a sacred text immune from interrogation, but as a living, breathing, and deeply contested instrument that has been used as much to concentrate power as to distribute it, as much to protect the state as to betray the citizen, and as much to preserve the colonial administrative grammar as to dismantle it.

Part Eighteen takes the argument further and deeper. It is no longer sufficient to note that the Constitution has defects. It is no longer intellectually honest to say merely that reforms are desirable. The accumulated weight of evidence, jurisprudence, political history, sociological reality, and comparative constitutional theory forces upon us a far more uncomfortable conclusion: that the Constitution of India, in its present form and with its present trajectory of misuse and reinterpretation, represents a document whose foundational assumptions, inherited

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colonial architecture, centralizing tendencies, and structural ambiguities have produced a political system that is increasingly nationalist in character, increasingly dictatorial in operation, deeply undemocratic in its practical outcomes, chronically cruel to its most vulnerable citizens, and thoroughly corrupted at every level of its institutional machinery.

This part investigates that proposition with the rigour it demands. It does so through eight chapters, each of which approaches the central thesis from a distinct angle: architectural, colonial, federal, rights-based, nationalist, societal, international, and reformist. The investigation draws upon the full spectrum of jurisprudential philosophy, from the positivism of Austin and Hart through the natural law traditions of Fuller and Dworkin to the critical legal studies of Unger and Kennedy, from the republican theory of Pettit to the deliberative democracy of Habermas, from the postcolonial jurisprudence of Chatterjee and Baxi to the constitutional pluralism of MacCormick and Walker. It draws upon Indian Supreme Court judgments from the foundational era through the present day, upon parliamentary debates, upon the findings of constitutional commissions and law reform bodies, upon the testimony of independent journalists and civil society investigators, and upon the most recent academic literature produced in 2024, 2025, and the early months of 2026.

The reader who comes to this part expecting a defence of the existing order will be disappointed. The reader who comes expecting a nihilistic rejection of all constitutional possibility will equally find little comfort. What this part offers instead is an unflinching diagnosis followed by a principled prescription: the Constitution must either be comprehensively reformed from its foundations upward, shedding its colonial inheritance and its elitist assumptions, or it must be replaced altogether by a new constituent process that is genuinely democratic, transparently deliberative, and structurally resistant to the centralizing and authoritarian tendencies that have overwhelmed the original design.

CHAPTER ONE

THE ARCHITECTURE OF SUBJUGATION: HOW CONSTITUTIONAL DESIGN CREATES AUTHORITARIAN OUTCOMES

1.1 The Problem of Designed Concentration

Every constitution is, at its heart, a design document. It establishes not merely what institutions shall exist and what rights shall be guaranteed, but more fundamentally it determines where power shall reside, how it shall flow, who shall exercise it, and critically, who shall be unable to challenge it. The design choices embedded in a constitution are never neutral. They reflect the political philosophy, the social assumptions, the class interests, and the historical moment of the people who made them. Understanding why the Constitution of India produces the outcomes it does requires understanding the design choices made between 1946 and 1950, the context in which those choices were made, and the long-term structural consequences that those choices have generated.

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The standard account of the Indian Constitution's origins presents the Constituent Assembly as a deliberative body of wise nationalists who, against extraordinary odds, produced a document of remarkable sophistication. This account is not entirely false. The Constituent Assembly debates reveal genuine intellectual engagement with difficult questions of constitutional design. B.R. Ambedkar's contributions in particular represent some of the most sophisticated constitutional thinking produced anywhere in the world during the postwar period. The Objectives Resolution moved by Jawaharlal Nehru established an aspirational framework that commanded near-universal assent among the delegates.

But this standard account obscures as much as it reveals. The Constituent Assembly was not a democratically elected body in any meaningful sense. It was assembled through a process of indirect election by provincial legislatures that were themselves elected on a severely restricted franchise, one that excluded the vast majority of the Indian population. The people of India did not choose their constitutional framers. The constitutional framers were chosen by a small educated elite, and they represented, overwhelmingly, the interests and worldviews of that elite. The Congress party dominated the Assembly to an extent that made meaningful opposition almost structurally impossible. Large sections of Indian society, particularly the rural poor, the scheduled castes and tribes, women, and religious minorities, were represented not as protagonists in the constitutional drama but as objects of constitutional concern, people to be protected or elevated by the benevolent state rather than as agents who might shape the state's design.

This foundational elitism was not an accident. It was a structural consequence of the manner in which the constituent process was organized, and it left deep marks on the document that emerged from that process. The Constitution of India is, at its core, an elite document. It assumes a state that is benevolent, knowledgeable, and capable. It assumes a citizenry that is, at least initially, not yet ready for full democratic self-governance and requires guidance from above. It assumes that complex social and economic problems can best be addressed through centralized state action rather than through decentralized democratic participation. These assumptions are not articulated openly in the constitutional text. But they are encoded in the institutional design choices that the document makes, choices about how power is allocated between the centre and the states, between the executive and the legislature, between elected governments and appointed bureaucracies, between the state and the citizen.

1.2 The Emergency Architecture and Its Permanent Shadow

The single most revealing feature of the Indian Constitution's design philosophy is the architecture of emergency powers contained in Part XVIII of the document. Articles 352 through 360 create a framework under which the normal constitutional order can be suspended, fundamental rights curtailed, federalism effectively abolished, and the executive given something approaching dictatorial authority, all while maintaining the formal appearance of constitutional governance. This architecture was not created in response to a specific crisis. It was built into the original document from the beginning, drawn explicitly from the Government of India Act 1935 and the Weimar Constitution of Germany, two instruments whose capacity for abuse was already well-documented by the time the Indian Constituent Assembly met.

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The philosopher Carl Schmitt, whose work on emergency powers and the "state of exception" has become central to contemporary constitutional theory, argued that sovereignty is revealed not in ordinary governance but in the decision about the exception. Who decides when normal law is suspended? Who determines that an emergency exists? Who controls the return to normalcy? These questions reveal where real power resides in any constitutional system. In the Indian Constitution, the answer to all three questions points unmistakably toward the central executive. The President, acting on the advice of the Prime Minister and Cabinet, declares emergency. The President determines that the emergency continues. The President, again on advice, decides when it ends. The Parliament provides a check in theory, requiring ratification within specific timeframes, but in practice, a government with a parliamentary majority faces no meaningful constitutional constraint on its ability to invoke and maintain emergency rule.

The 1975 emergency declaration by Prime Minister Indira Gandhi demonstrated with terrible clarity what this architecture could produce. India's democracy was suspended for twenty-one months. The press was censored. Political opponents were imprisoned without trial. Elections were postponed. Constitutional amendments were pushed through a cowed Parliament at extraordinary speed. The judiciary, initially defiant in the Allahabad High Court's judgment finding Gandhi's own election invalid, was eventually brought to heel through a combination of intimidation, judicial supersession, and the infamous Additional District Magistrate, Jabalpur versus Shivkant Shukla judgment of 1976, in which the Supreme Court ruled, to its lasting shame, that even the right to life could be suspended during emergency. Justice H.R. Khanna's lone dissent in that case stands as one of the most courageous acts in the history of Indian constitutionalism, and his subsequent supersession for promotion to Chief Justice illustrated precisely how the system punishes those who speak constitutional truth to concentrated power.

The emergency of 1975-1977 was eventually lifted. Elections were held. The Congress was defeated. But the constitutional architecture that made the emergency possible was not dismantled. The 44th Amendment of 1978, passed by the Janata government that came to power on an anti-emergency wave, made some improvements. It required that the Cabinet's written communication of the decision to proclaim emergency precede the President's proclamation. It changed the basis of emergency from "internal disturbance" to "armed rebellion." It required that the Lok Sabha approve the proclamation by a special majority within a month. It permitted one-tenth of Lok Sabha members to requisition a special sitting to vote on revoking the proclamation. These were real improvements.

But they did not eliminate the fundamental problem. The architecture of emergency remains in place. A government with a sufficient parliamentary majority, which in India means a majority in the Lok Sabha alone thanks to the money resolution provisions that neutered the Rajya Sabha as a check on money bills and then the creeping expansion of that logic through successive governments, retains the structural capacity to suspend normal constitutional governance. The anti-defection law of the Tenth Schedule, which was intended to prevent the horse-trading that destabilized governments but has instead become an instrument for enforcing party-line voting and thus concentrating power in party leadership rather than elected representatives, compounds the problem by making parliamentary majorities more durable and more disciplined than the framers anticipated.

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1.3 The Governor Problem and its Constitutional Roots

The office of the Governor, established by Article 153 of the Constitution, represents one of the most persistently problematic elements of the constitutional architecture. The Governor is appointed by the President, which in practice means by the central government. The Governor holds office at the pleasure of the President, again meaning at the pleasure of the central government. The Governor has significant discretionary powers, including the power to invite a party leader to form a government after an election, the power to recommend the dissolution of the state legislature, and the power to withhold assent from state legislation or reserve it for the President's consideration. These powers create a structural mechanism through which the central government can intervene in state politics and destabilize state governments that are politically inconvenient.

The history of the misuse of the Governor's office fills volumes. Since independence, more than one hundred instances of the imposition of President's Rule under Article 356 have been documented, and in a substantial proportion of cases, the imposition was constitutionally dubious, politically motivated, or both. The S.R. Bommai case of 1994, in which the Supreme Court substantially curtailed the misuse of Article 356 by holding that the floor of the House rather than the governor's report was the appropriate place to test whether a government enjoyed majority support, represented a significant step forward. But the Bommai judgment did not eliminate the problem. Governors continued to act in partisan ways, delaying the oath-taking of validly elected governments, as in Goa in 2017, manipulating the invitation to form government after hung assembly elections, as in Karnataka in 2018, and reserving bills for presidential consideration as a mechanism of political harassment, as multiple states governed by opposition parties have experienced in the years since 2014.

The constitutional design makes this problem almost insoluble without fundamental structural change. As long as the Governor is appointed by and removable by the central government, the office will be vulnerable to political manipulation. Suggestions for reform have included making the Governor's appointment subject to concurrence by the state government, giving the Governor a fixed term removable only through a process analogous to judicial impeachment, expanding the role of the state legislature in approving the appointment, or abolishing the office entirely and replacing it with a figurehead elected by the state legislature. Each of these proposals has merit. None has been seriously pursued by any central government, because every central government, regardless of its ideological colour, has found the malleable Governor useful when the need arose.

1.4 The Anti-Defection Law's Perverse Effects

The Tenth Schedule of the Constitution, added by the 52nd Amendment of 1985, was designed to address a genuine problem: the phenomenon of "aaya ram gaya ram" legislators who switched parties multiple times in response to inducements, destabilizing governments and making a mockery of electoral mandates. The solution chosen was to make it legally impossible for an elected representative to vote against their party's direction without losing their seat. A member of Parliament or state legislature who votes contrary to the party whip, or who voluntarily gives

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up party membership, is disqualified from holding their seat. The disqualification is decided by the Speaker or Chairman of the relevant House.

The consequences of this design have been deeply perverse. Anti-defection law, intended to stabilize government, has instead transformed elected legislators from independent representatives of their constituents into creatures of party discipline. The legislator's primary loyalty, enforced by the threat of disqualification, is to the party leadership rather than to the voters who elected them or to their own judgment about what the public interest requires. When the party leadership is constitutionally responsible to the party's parliamentary group through internal democracy, this might be tolerable. But in India's political parties, which are almost uniformly characterized by high personalism and low internal democracy, the effect is to make the legislator an instrument of the party leader's will. Parliament becomes not a deliberative assembly in which independent representatives wrestle with difficult questions of public policy, but a ratification machine for decisions already made in the party's inner circles.

The Speaker's role in deciding disqualification disputes compounds the perversion. The Speaker is herself an elected member of the majority party. She is chosen by the majority and owes her position to the majority's continued support. Asking the Speaker to decide impartially whether members of the ruling party have properly applied the whip, or whether members of the opposition have properly crossed the floor, is asking for something that the structural incentives of the office make almost impossible to deliver. The Supreme Court has repeatedly noted the unsatisfactory nature of the Speaker's role in anti-defection decisions and has on numerous occasions been forced to intervene to correct manifestly partisan decisions. The Keisham Meghachandra Singh case of 2020, in which the Court directed the Speaker of the Manipur Assembly to decide pending disqualification petitions within four weeks, was one of many such interventions. The fundamental structural problem, however, remains unreformed.

1.5 The Ordinance Power and the Bypassing of Parliament

Article 123 gives the President the power to promulgate ordinances when Parliament is not in session, if the President is satisfied that circumstances exist that require immediate action. Article 213 gives identical powers to Governors with respect to state legislatures. An ordinance has the same force as a parliamentary act but must be laid before Parliament when it next sits and ceases to operate if not approved within six weeks of the commencement of the parliamentary session, or if a resolution disapproving it is passed by Parliament.

The ordinance power was conceived as an emergency measure, a means of addressing genuinely urgent situations that could not await the next parliamentary session. In practice, it has become a standard legislative tool, used routinely to bypass parliamentary scrutiny, to implement controversial policy measures that the government fears might face legislative resistance, and to create facts on the ground that make subsequent parliamentary disapproval practically difficult even if it were forthcoming. The practice of re-promulgating ordinances, issuing a new ordinance immediately before the previous one lapses so as to maintain legislative validity without parliamentary approval, became endemic before the Supreme Court's intervention in D.C. Wadhwa versus State of Bihar in 1987, which held that the practice of repeated re-promulgation

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subverts the constitutional scheme and amounts to a fraud on the Constitution. Despite this judgment, creative workarounds have been developed and deployed.

The ordinance power is concentrated in the executive because the Constitution's design assumes an executive that will use it sparingly and in genuine emergencies. When governments use it systematically as a legislative tool of first resort rather than last resort, the constitutional design breaks down. The farmer protection ordinances of 2020, which were later converted into the controversial farm laws that triggered one of the largest protest movements in Indian history before being repealed, illustrated the problem. A decision of enormous consequence for hundreds of millions of farmers was first made through executive ordinance, bypassing parliamentary deliberation, and then pushed through Parliament through a process in which the opposition alleged that the bills were passed without proper discussion and without the division vote that opposition members demanded. The Supreme Court's subsequent stay of implementation in January 2021 represented an extraordinary acknowledgment that the legislative process had failed.

1.6 The Repugnancy Doctrine and Central Dominance

Schedule Seven of the Constitution divides legislative subjects between the Union List, the State List, and the Concurrent List. The arrangement appears to establish a federal system in which the states have exclusive legislative authority over subjects in the State List, shared authority with the Parliament over subjects in the Concurrent List, and no authority over subjects in the Union List. But Article 254, which establishes the repugnancy doctrine for Concurrent List subjects, and more importantly the constitutional practice that has evolved around it, significantly erodes what appears to be a genuine federal division of powers.

Under Article 254, where a state law on a Concurrent List subject is repugnant to a parliamentary law on the same subject, the parliamentary law prevails. This is unremarkable in itself and mirrors similar provisions in other federal constitutions. What is more remarkable is the extent to which the Union List has been interpreted expansively, the extent to which residuary powers have been claimed by the centre, the extent to which Concurrent List subjects have been treated by the Parliament as essentially central subjects, and the extent to which Articles 249 and 250 allow the Parliament to encroach on the State List in circumstances of national interest resolutions and emergency respectively.

The result is a nominally federal structure that operates in practice as a significantly centralized system. The states are not genuinely autonomous entities with secure spheres of authority. They are, in the constitutional scheme as actually practiced, subordinate administrative units of the central government, constrained in their legislative authority, dependent on the centre for a substantial proportion of their financial resources through the tax sharing mechanisms that give the Finance Commission and the Planning Commission and now the NITI Aayog an outsized role in directing state policy, and subject to central intervention through the Governor and President's Rule mechanisms whenever political circumstances make such intervention advantageous to the ruling party at the centre.

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The jurisprudential dimension of this problem is captured in the concept of cooperative federalism, which has been extensively promoted by successive governments as the proper model for centre-state relations. The concept is not without merit. In complex polities with shared governance challenges, cooperation between levels of government is essential. But cooperative federalism, when practiced in a context of structural inequality between the partners, becomes a euphemism for central direction with state compliance dressed up as collaboration. When the fiscal architecture is designed so that states depend on central transfers for a large proportion of their revenue, when the Governor's office gives the centre a permanent foothold in state governance, and when the repugnancy doctrine and the residuary power clause tilt legislative authority toward the centre, the cooperation that federalism supposedly embodies is cooperation between unequal partners, a situation that scholars of federalism like William Riker and Daniel Elazar would recognize as fiscal and political asymmetry rather than genuine federal partnership.

CHAPTER TWO

THE COLONIAL GHOST: BRITISH LEGAL INHERITANCE AND ITS CONTINUING STRANGLEHOLD

2.1 The Myth of Constitutional Independence

When India became a republic on January 26, 1950, the political narrative was one of decisive constitutional break from the colonial past. The Constitution replaced the Government of India Act 1935 as the supreme law. The Crown was replaced by an elected President. The Dominion of India became the Republic of India. These were real changes. But constitutional rhetoric and constitutional reality are not the same thing, and a careful examination of the Constitution's substantive provisions, its institutional architecture, and the legal culture that animated its interpretation reveals that the break from the colonial past was far less decisive than the founding narrative claimed.

The Constitution borrowed approximately 250 provisions more or less wholesale from the Government of India Act 1935. This was not a secret at the time. The resemblance was so extensive that critics in the Constituent Assembly described the Constitution as essentially a reformed version of the colonial instrument. T.T. Krishnamachari's famous complaint that the draft Constitution was a lawyers' paradise and Sir Alladi Krishnaswami Ayyar's vigorous defence of the borrowed provisions together illustrate that the extent of colonial inheritance was a live controversy during the drafting process rather than an oversight that only later became apparent. The constitutional framers made a deliberate choice to preserve much of the colonial administrative and legal machinery, partly for reasons of practical continuity, partly because the colonial machinery was the only bureaucratic apparatus available, and partly because many of the framers themselves were products of colonial legal education and could not easily think outside the frameworks that education had provided.

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2.2 The Government of India Act 1935 and Its Pervasive Legacy

The Government of India Act 1935 was a colonial instrument designed not to empower India's people but to manage them. It was designed by British administrators with the explicit objective of preserving British paramountcy while allowing a degree of Indian participation in provincial governance that would satisfy nationalist demands without fundamentally threatening imperial control. It created an elaborate federal structure that kept power firmly at the centre, which in 1935 meant at the Viceroy's level and thus ultimately at Westminster. It gave Governors extensive reserved powers and certifying powers that allowed them to override provincial legislatures. It preserved emergency powers that could suspend provincial autonomy at will. It created a carefully calibrated system of safeguards that ensured that Indian ministers, even where they held formal power, operated within constraints that the British administrators had defined.

When the Indian Constituent Assembly incorporated large portions of this Act into the Constitution, it carried over not just the textual provisions but the administrative philosophy encoded in those provisions. The Governor's role in the Constitution reflects the Viceroy's role in the 1935 Act. The President's Rule mechanism reflects the Viceroy's power to assume direct governance of provinces when provincial government failed. The emergency powers provisions reflect the wartime and security emergency provisions that had allowed the British to suspend civil liberties throughout the colonial period. The preventive detention provisions, which became Article 22 of the Constitution, reflect the Rowlatt Act and the Defence of India Rules that the nationalist movement had bitterly opposed when wielded by colonial authorities.

The philosopher Uday Mehta, in his work on liberalism and empire, has argued that liberal constitutionalism and colonial governance share a deeper philosophical structure than is commonly recognized: both posit a tutelary relationship between a knowing authority and a not-yet-ready subject population, both defer full democratic participation on grounds of insufficient preparation, and both reserve the real decisions about governance to an elite that claims superior knowledge or capacity. This critique applies with considerable force to the Indian constitutional enterprise. The Constitution's approach to Directive Principles, which are non-justiciable guidelines for the state rather than enforceable rights of citizens, embodies exactly this tutelary logic: the state knows what the people need; the people cannot enforce those needs as rights; they must wait for the state's benevolent attention.

2.3 Sedition, Preventive Detention, and the Counter-Subversion Architecture

The colonial heritage is nowhere more visible than in the continuing presence, long after independence, of legal provisions designed explicitly for the suppression of political opposition. Section 124A of the Indian Penal Code, which defines and criminalizes sedition, was introduced by the British in 1870 specifically to suppress nationalist political speech. It was used against Bal Gangadhar Tilak in 1897 and 1908 and against Mahatma Gandhi in 1922. When the nationalist movement gained independence, rather than abolishing a law used to imprison its own leaders, the Indian state preserved it and deployed it with increasing frequency against its own citizens.

The Supreme Court in Kedar Nath Singh versus State of Bihar in 1962 upheld the constitutional validity of Section 124A while reading it down to apply only to speech that incites violence or

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public disorder rather than to all political criticism. This reading was constitutionally inventive but practically insufficient. In the hands of lower courts, police authorities, and prosecuting agencies that are rarely so careful about constitutional subtleties, the sedition law continued to function as it always had: as a tool for silencing inconvenient voices. The Supreme Court in 2022 effectively put the law on hold, asking the government to reconsider its colonial-era provision, and the government in turn indicated a willingness to repeal and replace it. But as of early 2026, the position remains unresolved, the law remains on the statute book, and its use against journalists, activists, students, and political opponents has not ceased.

The National Security Act of 1980 and the Unlawful Activities Prevention Act, first passed in 1967 and comprehensively amended in 2019, extend the colonial preventive detention architecture into the contemporary period. Under the UAPA as amended in 2019, individuals can be designated as terrorists without any trial or conviction, their designation reviewed by a government-appointed review committee rather than by an independent court, their property frozen, and their movement restricted, all without any finding of guilt by any judicial authority. The bail provisions of the UAPA are structured so that bail is effectively unavailable: the court cannot grant bail unless it is satisfied that there are reasonable grounds for believing that the accusation against the person is prima facie not true, a standard that essentially requires the accused to disprove the government's case before their trial even begins. This reversal of the presumption of innocence represents a fundamental departure from the principles of natural justice that are supposedly constitutionalized in Article 21's guarantee of due process.

The statistics of UAPA application are revealing. Between 2016 and 2021, a period for which reasonably reliable data is available, thousands of people were charged under the UAPA. Conviction rates remained extremely low, typically below 3 percent of those charged. The overwhelming majority of those charged spent years in pre-trial detention, often under conditions that the courts themselves described as inadequate. Father Stan Swamy, the 83-year-old Jesuit priest and tribal rights activist who was arrested in October 2020 on charges that the evidence suggests were substantially fabricated, died in judicial custody in July 2021 before his bail application could be heard. His death became a symbol of how the UAPA's bail provisions function as a form of indefinite imprisonment for the designated enemy of the state.

2.4 The Official Secrets Act and the Suppression of Accountability

The Official Secrets Act of 1923, another colonial inheritance, represents one of the most persistent obstacles to government accountability and informed public debate. The Act criminalizes the disclosure of any information that an officer of government designates as secret, without requiring that the information actually threaten any genuine security interest. It has been used systematically to suppress investigative journalism, to prevent whistleblowers from exposing corruption or abuse, and to maintain the culture of official secrecy that characterizes bureaucratic cultures inherited from the British.

The Right to Information Act of 2005 represented a significant attempt to counteract the Official Secrets Act's culture of opacity. The RTI Act established a right of access to government information subject to a set of exemptions, created an information commissioner structure to adjudicate disputes, and established a regime of penalties for officials who withheld information

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improperly. In its early years, the RTI Act was transformative. Activists used it to expose corruption in social welfare programs, document police brutality, reveal the misappropriation of public funds, and challenge bureaucratic arbitrariness. RTI was, for a period, the most powerful weapon available to ordinary citizens against institutional opacity.

But the Official Secrets Act was never repealed, and its provisions were used to resist RTI requests that touched on security-related matters. More significantly, successive governments found other mechanisms to weaken the RTI regime. Appointments to information commissions became increasingly politicized. Response times lengthened. Appeals multiplied and went unresolved for years. The Right to Information (Amendment) Act of 2019 changed the tenure and salary conditions of information commissioners, making them dependent on government discretion rather than statutory protection, which critics argued would chill the independence necessary for commissioners to make difficult decisions against the government.

2.5 The Criminal Procedure Code and Police Powers

The Code of Criminal Procedure, the Indian Evidence Act, and the Indian Penal Code together constitute the core of India's criminal justice system, and all three were colonial instruments designed during the period of British rule. The CrPC of 1973 was a revision of the 1898 Code, which was itself a descendant of the colonial codes that gave police enormous powers of arrest, search, and interrogation with minimal judicial supervision. The colonial police were designed not to protect citizens from crime but to protect the colonial state from political challenge, and the powers they were given reflected that purpose. When those powers passed to independent India's police forces, they remained available for similar purposes.

The powers of arrest without warrant, the powers of preventive detention under various state and central laws, the powers of search and seizure, the powers of interrogation unconstrained by any right to silence, and the culture of police violence against suspects and detainees that has characterized Indian policing throughout the post-independence period all reflect the colonial inheritance. The Law Commission's recommendations for police reform, articulated repeatedly over several decades, have gone largely unimplemented. The Supreme Court's landmark judgment in Prakash Singh versus Union of India in 2006, which issued specific directions for police reform including the creation of a fixed-tenure Director General of Police, the establishment of Police Establishment Boards to make postings and transfers, and the creation of independent Police Complaints Authorities, has been partially implemented at best, and in many states simply ignored.

The new criminal codes enacted in 2023, the Bharatiya Nyaya Sanhita, the Bharatiya Nagarik Suraksha Sanhita, and the Bharatiya Sakshya Adhiniyam, replaced the IPC, CrPC, and Evidence Act respectively with instruments bearing distinctively Indian names. These changes generated enormous debate about whether the substance of the law had been meaningfully reformed or whether the same colonial provisions had simply been repackaged under nationalist branding. Critics noted that the new Bharatiya Nyaya Sanhita retained a provision equivalent to sedition under a different name and different framing, that the police powers in the Bharatiya Nagarik Suraksha Sanhita were largely unchanged in their essentials, and that the colonial structure of criminal procedure had not been fundamentally altered. Supporters argued that the new codes did

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introduce some meaningful reforms, including provisions on organized crime, terrorism financing, and updated evidence rules for the digital age.

What is clear is that the renaming of colonial instruments does not constitute the decolonization of constitutional and legal culture. Decolonization requires not merely changing the names of laws but reconceiving their fundamental purpose, shifting from a law enforcement model in which the state's authority is the primary value to be protected to a rights-protection model in which the individual's liberty is the primary value to be protected, and restructuring the institutional relationships, training, accountability mechanisms, and oversight systems through which laws are applied to reflect that reconceptualization.

2.6 The Bureaucracy as Colonial Inheritance

The Indian Administrative Service, the successor to the Indian Civil Service, represents the most direct and most powerful inheritance from the colonial period. The IAS was explicitly designed by Sardar Vallabhbhai Patel, who as Home Minister oversaw the integration of the princely states and the design of the new bureaucratic apparatus, on the model of the ICS: an elite generalist service trained in governance, possessing permanent tenure and substantial independence from political direction, responsible for maintaining the continuity and stability of administration even as governments changed. Patel described the IAS as the "steel frame" of India, echoing the British characterization of the ICS.

The steel frame metaphor is revealing in its ambiguity. A steel frame provides structure and support, but it also constrains what can be built. An administrative system designed for stability and continuity will resist change. An administrative culture formed in the colonial period, in which the primary relationship between administrator and administered was one of authority and compliance rather than service and accountability, does not easily transform itself into a culture of democratic public service simply because the political context changes. The IAS culture of secrecy, hierarchy, insulation from popular pressure, and resistance to accountability is not a deviation from the colonial design: it is its direct continuation.

The relationship between the IAS and elected governments has been a persistent source of tension throughout Indian constitutional history. Elected ministers need officials who will implement policy. Officials who are trained to see themselves as guardians of long-term public interest rather than servants of short-term political direction will resist policy changes they regard as misguided. The tension is in some respects healthy: a civil service that merely implements whatever the political masters direct provides no check on corrupt or incompetent governance. But the tension also creates a system in which accountability is systematically avoided. When things go wrong, the official blames the minister's direction. The minister blames the official's implementation. Neither is held fully accountable. Corruption flourishes precisely in these accountability gaps.

The transfer system, under which IAS officers can be moved from post to post at the pleasure of the state government, represents a mechanism through which the colonial steel frame's independence has been replaced by political dependence of a more insidious kind. An officer who resists a minister's corrupt instruction can be transferred to an inconvenient posting. An

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officer who cooperates with corruption is rewarded with desirable postings. The result is not the independent civil service that Patel imagined but a bureaucracy that is simultaneously insulated from formal accountability to citizens and completely vulnerable to informal direction by political superiors whose directions may be corrupt. The bureaucratic culture this produces is one of formal compliance combined with practical obstruction, a culture in which rules are followed when it is advantageous to follow them and circumvented when it is advantageous to circumvent them, and in which the citizen who encounters this system discovers that the rules always seem to work against them.

CHAPTER THREE

POWER WITHOUT DISTRIBUTION: FEDERALISM AS FICTION

3.1 The Theoretical Framework of Indian Federalism

K.C. Wheare, the Oxford constitutional scholar who produced the most influential mid-twentieth century account of federal government, argued that genuine federalism requires that the division of powers between the national and regional governments be such that both levels are coordinate and independent, neither being subordinate to the other, and both receiving their authority from the constitution rather than from each other. By this standard, Wheare famously suggested, India was not genuinely federal at all but rather "quasi-federal," with a strong unitary bias. Decades of political experience have vindicated Wheare's skepticism even as Indian constitutional scholars have pushed back against his framework.

The pushback from Indian scholars like Granville Austin, who described the Indian constitution as a "cooperative federalism" model, and from more recent scholars who argue that Indian federalism has evolved significantly through political practice, judicial interpretation, and institutional adaptation, raises important points. Indian federalism is undoubtedly more complex and more dynamic than a simple unitary-versus-federal binary can capture. The rise of regional parties, the coalition politics of the 1990s and 2000s, the increasingly assertive state governments that have used fiscal leverage, social mobilization, and media platforms to defend their interests against central encroachment, and the Supreme Court's jurisprudence on federalism all complicate any simple assessment.

But complication is not the same as correction. The structural features that Wheare identified as giving Indian federalism its unitary bias remain in place. The Governor's office, the emergency powers, the residuary powers clause, the finance commission's role in determining state revenues, the planning apparatus's role in directing state expenditures, and the repugnancy doctrine all continue to tilt the constitutional balance toward the centre. When a party controls both the centre and a sufficient number of states, these features lie relatively dormant. When the centre is controlled by one political formation and states by another, the features become weapons in a constitutional struggle in which the centre has structural advantages.

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3.2 The Finance Commission and Fiscal Federalism's Distortions

The relationship between fiscal autonomy and genuine federalism is a central theme in the scholarly literature on federal government. States that depend on the centre for a substantial portion of their revenue cannot genuinely be coordinate governments. Their programmatic priorities, their administrative choices, and ultimately their political allegiances are shaped by the terms on which central transfers are made available. The Finance Commission, constituted under Article 280 of the Constitution, is supposed to be the neutral arbiter of the revenue sharing between the centre and the states, recommending the devolution of central taxes to states and the grants to be made from the Consolidated Fund of India.

The Finance Commission's role is constitutionally important and has been filled by serious bodies that have produced thoughtful recommendations. The 15th Finance Commission, for example, navigated the politically complex question of how to account for population data from different census years in calculating state shares, a question with significant distributive implications given the differential rates of population growth across states. But the Finance Commission is a recommendatory rather than a binding body. Its recommendations are accepted or modified by the central government. And the overall fiscal architecture within which it operates gives the centre enormous advantages.

Centrally Sponsored Schemes represent one of the most significant mechanisms through which fiscal federalism has been distorted in India. These are programs financed partly by the centre and partly by the states, designed and administered centrally, and implemented through state administrative machinery. From the perspective of a state government facing a development challenge, Centrally Sponsored Schemes represent available resources that would be irrational to refuse. But by accepting these resources, the state implicitly accepts the centre's priorities, the centre's program designs, the centre's administrative requirements, and the centre's monitoring and evaluation systems. State autonomy in development policy is sacrificed for fiscal support. Over time, the proliferation of Centrally Sponsored Schemes has created a system in which the state governments are effectively implementing agencies for central programs rather than autonomous governments pursuing their own development visions.

3.3 The GST Council and the New Fiscal Constitutionalism

The introduction of the Goods and Services Tax in 2017 required one of the most significant constitutional amendments in post-independence history, the 101st Constitutional Amendment Act, which established the GST Council as a constitutional body and gave the Parliament and state legislatures concurrent powers to make laws on GST, with the proviso that Parliament's law would prevail in cases of conflict. The GST Council, constituted by the Finance Minister of India as chair and the Finance Ministers of all states as members, represents a genuinely novel constitutional institution: a body of concurrent governance in which centre and states must cooperate to make fundamental fiscal decisions.

The GST Council has, in its operation, produced some evidence of genuine cooperative federalism. Decisions are supposed to be made by three-fourths majority, with the centre having one-third of votes and states together having two-thirds. This gives either the centre or a coalition

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of states a blocking minority on most decisions, theoretically ensuring that neither can impose its will unilaterally. In practice, the Council has operated largely by consensus, which in a context where the political dynamics favour centre-state agreement is a positive sign. But the fundamental asymmetries of the relationship have not disappeared. The centre's administrative apparatus is more developed. Central bureaucrats draft most proposals. The finance ministry's technical expertise dwarfs that of most state finance ministries. And the political dynamics of the GST Council mean that states governed by the ruling party at the centre have different incentives from states governed by opposition parties, creating a structural alignment problem.

More fundamentally, the shift to GST eliminated most of the states' independent tax-raising capacity. States previously had the power to levy sales tax, which was a major source of own revenue. Under GST, this capacity is replaced by the state's share of GST revenue as determined by the Council. States no longer have independent fiscal instruments with which to respond to local economic conditions, pursue local fiscal priorities, or demonstrate fiscal innovation. They are dependent on a shared revenue pool whose sharing formula is determined by central-dominated processes. The compensation mechanism, which guaranteed states' revenue for five years after GST introduction, was phased out in 2022, creating significant fiscal stress for many states precisely as the post-pandemic economic recovery was requiring expanded state expenditure.

3.4 Language, Culture, and the Centralizing Impulse

The question of language policy illustrates the tension between the centralizing impulse in the constitutional design and the genuine diversity of Indian society with particular vividness. The Constitution recognized Hindi in the Devanagari script as the official language of the Union, and English as an associate official language for an initial period of fifteen years, after which the question was to be revisited. The Official Languages Act of 1963 effectively extended the use of English indefinitely, and the three-language formula that was supposed to balance regional language development with national communication needs has been contested since its inception.

The current politics of Hindi imposition, which has seen successive central governments take steps that critics characterize as giving preferential treatment to Hindi in government communications, public signage, professional examinations, and policy documentation, reopens a wound that has never fully healed since the anti-Hindi agitations of Tamil Nadu in 1965. The constitutional provisions on language are a product of a compromise that satisfied no one completely and that remains as contested today as it was in 1950. Non-Hindi-speaking states, particularly in the South and Northeast, experience the constitutional language regime as a form of cultural imposition that disadvantages their citizens in competitions for central government employment, reduces the visibility of their cultural production at the national level, and signals a hierarchy of regional cultures in which Hindi-speaking North India occupies the apex position.

The National Education Policy of 2020's provisions on the three-language formula, while genuinely complex and subject to different interpretations, were experienced in Tamil Nadu as another attempt to impose Hindi through educational policy, and the state government's resistance to the formula was sharp and politically resonant. The constitutional framework on language, which leaves the ultimate question of official language to parliamentary action subject

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to presidential assent, provides no clear mechanism for resolving the deep political dispute about language policy in a genuinely federal manner. The dispute is managed through political negotiation rather than resolved through constitutional principle, which means that it is always available to be reignited whenever political circumstances make it advantageous for any party to do so.

3.5 The Northeastern Question and the Limits of Constitutional Integration

The constitutional integration of India's Northeastern states represents one of the most complicated chapters in the history of Indian federalism, one that continues to generate insurgency, human rights violations, political violence, and profound alienation among significant portions of the Northeastern population more than seven decades after independence. The integration of Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Arunachal Pradesh, and Sikkim into the Indian constitutional order occurred through a variety of mechanisms, not all of which were characterized by the genuine consent of the populations concerned. The formal mechanisms of constitutional integration have not produced substantive integration at the level of social inclusion, economic development, or genuine democratic participation.

The Armed Forces (Special Powers) Act of 1958, initially enacted for a one-year period in response to the Naga insurgency, has been in continuous operation in various Northeastern states for more than sixty years. AFSPA gives the armed forces extraordinary powers in "disturbed areas": the power to use lethal force against any person acting in contravention of law, the power to arrest without warrant, the power to enter and search without warrant, and crucially, the immunity from prosecution without central government sanction. This last provision has been the most damaging. It means that soldiers who kill, torture, or rape civilians in Northeastern states face no realistic prospect of prosecution, because the central government has essentially never granted the required sanction.

The extra-judicial killings, the disappearances, the torture, the sexual violence, the psychological trauma inflicted on populations living under decades of military occupation: these constitute a systematic violation of the fundamental rights guaranteed by the same Constitution that AFSPA supposedly operates within. The Supreme Court has been repeatedly asked to strike down AFSPA or to substantially limit its scope. In Naga People's Movement for Human Rights versus Union of India in 1998, the Court upheld the Act while reading it down to require that power be used only in emergencies and that there be some periodic review of the disturbed area declaration. In the extrajudicial executions case from Manipur in 2016, the Court made a landmark declaration that the right to life under Article 21 applies even to alleged militants and that extrajudicial killings cannot be immune from scrutiny. But AFSPA remains in force, the immunity for criminal acts by security forces remains largely effective, and the alienation of Northeastern populations from the constitutional order remains a profound reality.

CHAPTER FOUR

THE WEAPONIZATION OF CONSTITUTIONAL LAW AGAINST CITIZENS

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4.1 The Paradox of Rights-Granting and Rights-Denying

The Constitution of India guarantees an extensive catalogue of fundamental rights in Part III. The right to equality before law and equal protection of laws. The right to freedom of speech and expression, assembly, movement, residence, profession, and the right to form associations. The right against exploitation, including the prohibition of trafficking and forced labour. The right to freedom of religion. Cultural and educational rights of minorities. And most expansively, the right to life and personal liberty under Article 21, which judicial interpretation has expanded into a vast umbrella covering the right to livelihood, the right to health, the right to a clean environment, the right to education, the right to privacy, and numerous other substantive entitlements.

This catalogue is genuinely impressive. It represents a real constitutional commitment to the protection of individual rights against state power. And the Supreme Court has at various points in its history given these rights real substance, protecting civil liberties against state encroachment, expanding the scope of Article 21 in ways that have benefited millions of marginalized people, and standing against executive arbitrariness with principled judgments that commanded both popular and scholarly respect.

But the same constitutional document that guarantees these rights also provides the mechanisms for their suspension. Article 19 guarantees freedoms of speech, assembly, movement, and profession, and Articles 19(2) through 19(6) immediately enumerate the grounds on which the state may restrict each of these freedoms. The grounds of restriction include public order, morality, the interests of the sovereignty and integrity of India, security of the state, friendly relations with foreign states, contempt of court, defamation, and incitement to an offence. These are broad categories. In the hands of courts applying deferential scrutiny and governments deploying aggressive advocacy, they are broad enough to justify restrictions on almost any speech or association that a government finds inconvenient.

4.2 The Bail Crisis and the Weaponization of Arrest

In India's criminal justice system, the distinction between guilt and innocence has in practice been substantially collapsed by the operation of bail law and pretrial detention. A person charged under any of the dozens of non-bailable offence categories defined in the Indian criminal codes, including the UAPA, the NSA, the Narcotics Drugs and Psychotropic Substances Act, the Prevention of Money Laundering Act, and numerous other central and state statutes, faces the prospect of pretrial detention for months or years while their case makes its way through an overwhelmed court system. The Supreme Court has itself acknowledged on multiple occasions that undertrial prisoners constitute a substantial proportion of India's prison population, estimates suggest between 75 and 80 percent, and that conditions in India's prisons are so severe that pretrial detention frequently constitutes a punishment more severe than the sentence that would be imposed on conviction.

The PMLA's bail provisions represent perhaps the most extreme example of the weaponization of criminal procedure. The Prevention of Money Laundering Act, as interpreted by the Enforcement Directorate, creates a framework in which arrest can be made on the basis of an ED

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officer's belief that the person has committed money laundering, whether or not a trial court has taken cognizance of any offence, whether or not the predicate offence has been prosecuted, and whether or not the evidence of money laundering is sufficient to meet any judicial threshold. Once arrested, the person must satisfy the court that they are not guilty before bail can be granted, the reversed burden of proof that the Supreme Court in Vijay Madanlal Choudhary versus Union of India in 2022 controversially upheld, a decision that attracted strong academic criticism and a dissent from one of the three-judge bench.

The political use of the ED has been extensively documented. Between 2014 and 2022, the ED registered more than 5,000 cases under the PMLA, an exponential increase from earlier periods. A disproportionate number of the most prominent cases involved political opponents of the ruling party at the centre. Several state chief ministers governed by opposition parties were arrested or investigated by the ED in circumstances that created a strong appearance of political motivation. The Supreme Court's observation in 2023 that the ED had become too powerful and needed to be reined in acknowledged the problem without providing a structural solution to it.

4.3 Contempt of Court as a Silencing Mechanism

The law of contempt of court in India represents another site where constitutional provisions designed to protect the judicial process have been regularly deployed to silence criticism of the judiciary itself. The Contempt of Courts Act of 1971, combined with the Supreme Court's inherent jurisdiction under Article 129 and the High Courts' inherent jurisdiction under Article 215, gives courts the power to punish for contempt by imprisonment or fine. The Supreme Court has used this power against lawyers who criticize its decisions, against journalists who write about judicial conduct, against social activists who allege judicial corruption, and against litigants who express frustration with judicial delays.

The most internationally prominent recent case was the contempt proceeding against advocate Prashant Bhushan in 2020 for tweets in which he criticized the Chief Justice and the Supreme Court's role in what he characterized as the destruction of democracy. The Supreme Court convicted Bhushan of criminal contempt for the tweets and sentenced him to a token fine of one rupee, while making clear that a larger punishment would have been possible. The proceedings were widely criticized by international legal bodies, bar associations, and constitutional scholars who argued that criticism of the judiciary, however sharp, falls within the protection of freedom of speech and that using contempt powers to punish such criticism chills constitutional discourse.

The more ordinary use of contempt powers, against litigants, against journalists reporting on pending cases, against advocates pressing inconvenient arguments, represents a constant low-level use of judicial authority to police the boundaries of acceptable discourse about the courts. This creates a zone around the judiciary that is systematically insulated from the kind of critical public scrutiny that democratic accountability requires. Judges cannot be criticized, judicial decisions cannot be described as wrong, judicial conduct cannot be investigated, and judicial corruption, which independent surveys have repeatedly identified as a significant problem, cannot be addressed through the mechanisms that would be available for addressing executive or legislative corruption.

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4.4 Environmental Law as a Double-Edged Sword

India's environmental law jurisprudence represents a fascinating and troubling case study in how progressive constitutional interpretation can produce outcomes that harm the very people it claims to protect. The Supreme Court's expansion of Article 21 to encompass the right to a healthy environment produced a series of landmark judgments in the 1990s that ordered the cleaning of the Ganga, relocated industries from Delhi, established environmental impact assessment requirements, and created the National Green Tribunal as a specialist environmental court. These developments were celebrated by environmental lawyers and activists as examples of public interest litigation at its finest.

But the environmental orders that cleared Delhi's industries created an economic catastrophe for the hundreds of thousands of workers employed in those industries, most of them from the most marginalized sections of society, who lost their livelihoods with minimal compensation and found their claims to alternative employment, resettlement assistance, and compensation essentially ignored by both the Supreme Court and the central government. The court that was so solicitous of Delhi's middle-class residents' right to clean air was considerably less attentive to the constitutional rights to livelihood and dignity of the poor workers whose industries were ordered shut.

The pattern repeats across multiple contexts. Forest conservation orders that protect biodiversity have been used to evict adivasi and forest-dwelling communities from forests their ancestors inhabited for generations, communities whose rights to forest residence were nominally protected by the Forest Rights Act of 2006 but whose protections proved largely illusory in the face of bureaucratic and judicial determination to enforce forest boundaries. River cleaning orders generate spectacular litigation but minimal improvement in river water quality, while the bureaucratic apparatus created to implement them becomes a vehicle for corruption and rent-seeking. Environmental impact assessment requirements, which should prevent developmental harm, have been routinely circumvented by ex post facto approvals and retroactive clearances, while the procedural requirements have been used by established industrial interests to block competition and by corrupt officials to extract rents.

4.5 Public Interest Litigation: Promise and Pathology

Public Interest Litigation was one of the genuinely transformative constitutional innovations of post-independence India. Pioneered by Justice P.N. Bhagwati and Justice V.R. Krishna Iyer in the late 1970s and early 1980s, PIL relaxed the traditional standing requirements that had limited access to constitutional courts to parties directly affected by the impugned governmental action. Under PIL doctrine, any person acting in the public interest, a concerned citizen, a journalist, a social activist, even a court acting suo motu on the basis of a newspaper report, could move the constitutional courts to address systemic violations of fundamental rights.

The early PIL judgments produced results of extraordinary significance. Cases addressing bonded labour, prison conditions, undertrials, custodial violence, the rights of pavement dwellers, the working conditions of quarry workers, and the access of children to education produced both immediate relief for affected populations and systemic changes in how the state

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approached its constitutional obligations toward the most marginalized citizens. These judgments drew upon a philosophy of substantive equality and active state obligation that went far beyond the formal liberty rights of classical constitutional liberalism.

But PIL also created pathologies that have grown more severe over time. The relaxation of standing requirements opened the courts to a flood of petitions that had nothing to do with public interest and everything to do with private grievance, commercial dispute, or political agenda dressed in public interest language. The Supreme Court's docket became overwhelmed with PIL petitions addressing everything from Bollywood film content to cricket board governance to the regulation of roadside vendors. More seriously, PIL gave conservative and nationalist interest groups the same access to constitutional courts as progressive social activists, and the results were sometimes profoundly regressive, forcing the demolition of unauthorized constructions in informal settlements (almost always inhabited by the poor), ordering the closure of industries in the name of environmental protection (almost always impacting workers rather than owners), and enabling judicial interference in executive decision-making that amounted to a form of judicial government in which unelected judges effectively administered complex policy areas.

The PIL jurisdiction also enabled a form of judicial populism in which judges issued orders that earned public approval without adequate engagement with the practical consequences of implementation. Sealing orders that closed commercial establishments in unauthorized buildings in Delhi satisfied the court's environmental and zoning concerns while devastating thousands of small businesses and their employees. School admission orders that imposed specific procedural requirements satisfied formal equality norms while creating administrative chaos that ultimately disadvantaged the children the orders were meant to protect.

CHAPTER FIVE

THE NATIONALIST CAPTURE OF DEMOCRATIC INSTITUTIONS

5.1 The Constitutional Basis of Majoritarian Democracy

The most profound challenge to India's constitutional order in the contemporary period comes not from a dramatic breach of constitutional form but from a systematic erosion of constitutional substance through the mechanisms of formal democracy. The BJP-led government under Prime Minister Narendra Modi that has governed India since 2014, with a substantial parliamentary majority achieved in 2014, a larger majority in 2019, and a reduced but still significant majority in 2024, has pursued a program that critics describe as Hindu nationalist majoritarianism operating through constitutional forms while systematically dismantling the substantive constitutional commitments to secularism, minority rights, press freedom, and institutional independence.

This critique requires careful calibration. The BJP won its parliamentary majorities through elections that were by the standards of most comparative measures reasonably free, though concerns about voter registration, media access, campaign finance, and the political deployment

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of central investigative agencies were substantial and documented. The use of parliamentary majorities to push through significant legislative changes is formally constitutional. And many specific BJP policies have substantive arguable justifications that deserve engagement rather than dismissal.

But the pattern of institutional change, taken as a whole, has produced a situation that scholars of democratic backsliding, notably Steven Levitsky and Lucan Way in their work on competitive authoritarianism, would recognize as a systematic effort to entrench political dominance by changing the rules of the game while formally maintaining electoral competition. The moves against institutional independence, the politicization of investigative agencies, the pressure on media organizations, the use of the regulatory state against critical voices, the deployment of anti-defection law to discipline legislators, and the marginalization of parliamentary scrutiny through the use of money bills, guillotine, and shortened debate time all fit the pattern that Levitsky and Ziblatt identified as the playbook of elected authoritarianism in How Democracies Die.

5.2 The Election Commission and Its Contested Independence

The Election Commission of India, established under Article 324 of the Constitution, is one of India's most important constitutional institutions. Its role in conducting free and fair elections is the operational foundation of Indian democracy. During its tenure under T.N. Seshan in the 1990s, the Commission demonstrated that it was capable of assertive independence, using its constitutional powers to impose the model code of conduct with unprecedented rigour, confronting state governments that used official resources for electoral advantage, and generally transforming what had been a relatively passive administrative body into an active guardian of electoral integrity.

The constitutional provisions governing the Election Commission were amended by the Election Laws (Amendment) Act of 2023, which changed the composition of the committee that selects Chief Election Commissioners and Election Commissioners. Before this amendment, a Supreme Court judgment in Anoop Baranwal versus Union of India in March 2023 had held that the appointment committee should include the Chief Justice of India, to prevent executive capture of the selection process. The 2023 amendment, passed just months after this judgment, established a selection committee comprising the Prime Minister, a Cabinet Minister nominated by the Prime Minister, and the Leader of the Opposition in the Lok Sabha, deliberately excluding the judiciary from the selection process.

The effect of this change is to give the executive a 2-to-1 majority on the selection committee, which means that if the Leader of the Opposition opposes an appointment, the executive can outvote them. Critics argued that this returns the appointment process to exactly the situation that the Supreme Court's Anoop Baranwal judgment had identified as constitutionally inadequate. The first appointments made under the new process, to fill vacancies created by resignations and retirements, were criticized by opposition parties as politically motivated, though the appointed commissioners denied any compromise of independence.

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The controversy over the 2024 general election, in which allegations were made about the malfunction of electronic voting machines, disparities in vote counting, selective application of the model code of conduct, and partisan use of Aadhaar-linked voter roll cleaning operations, added to the concerns about the Commission's independence. The Supreme Court's dismissal of petitions seeking a return to paper ballots did not resolve the underlying loss of public confidence in electoral institutions that the controversy reflected.

5.3 The Judiciary Under Pressure

The independence of the Indian judiciary has been a contested question throughout the post-independence period, but the pressures on judicial independence in recent years have been of a qualitatively different character from earlier conflicts. The collegium system of judicial appointment, in which senior judges of the Supreme Court effectively appoint their successors through a process that the executive can delay but not formally override, was itself a product of judicial assertion in the Second Judges Case of 1993 and the Third Judges Case of 1998, correcting what the Court identified as the executive's unconstitutional dominance of judicial appointments through the mechanism of the "concurrence" requirement in Article 124.

The current conflict centres on the collegium's recommendations for high court and Supreme Court appointments, which the government has delayed for months or years, effectively using delay as a veto that the constitutional text does not explicitly provide. The government's repeated advocacy for the National Judicial Appointments Commission as an alternative to the collegium, which the Supreme Court struck down in 2015 as violating judicial independence, and the executive's public criticism of collegium appointments and judicial decisions on matters of political sensitivity, have created an atmosphere of ongoing tension between the executive and the judiciary.

More subtly, there is the question of what political scientists call the "chilling effect" on judicial behaviour when judges know that their post-retirement appointments, their reputation in public discourse, and the treatment of their family members' professional interests are all in some sense conditioned on their relationship with the executive. The Supreme Court's decision to deny bail to high-profile political opponents of the ruling party in cases where bail might have been expected on ordinary principles, combined with decisions favorable to the government in politically sensitive constitutional matters, has generated academic debate about whether judicial independence is effectively compromised through mechanisms that fall short of direct political interference.

5.4 The CAA-NRC Combine and the Threat to Citizenship

The Citizenship Amendment Act of 2019 represents the most significant challenge to the Constitution's secular foundations since the Babri Masjid demolition of 1992 and the consequent constitutional and legal crisis. The CAA amended the Citizenship Act of 1955 to create a fast-track path to Indian citizenship for persecuted religious minorities from Pakistan, Bangladesh, and Afghanistan, with the critical proviso that this fast-track applied only to Hindus, Sikhs, Buddhists, Jains, Parsis, and Christians from those countries, explicitly excluding Muslims.

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The constitutional challenge to the CAA was straightforward: the Act distinguishes between people seeking citizenship on the basis of religion, and the Constitution's guarantee of equality under Articles 14 and 15 prohibits the state from discriminating on grounds of religion. The government's response was that the CAA was not discriminating against Indian Muslims, who were not the intended beneficiaries of the provision in any case, but was rather providing relief to specific persecuted minority groups from neighbouring Muslim-majority countries. The Supreme Court admitted petitions challenging the CAA and issued notice to the government, but more than five years after the Act's passage, no judgment on its constitutional validity had been delivered.

The CAA was widely understood to acquire its full significance only in conjunction with the proposed National Register of Citizens, which would require all Indian residents to prove their citizenship through documentary evidence, and the National Population Register, which would create a national database of Indian residents. In this combination, critics argued, the CAA would function as a safety net for Hindus who could not prove their citizenship (they could apply under the CAA), while Muslims who could not prove their citizenship would face statelessness or detention. The protests against the CAA-NRC combination, which erupted across India in late 2019 and early 2020, represented the largest sustained protest movement India had seen in decades and included the remarkable Shaheen Bagh sit-in in Delhi that lasted months before being dispersed during the COVID lockdown.

5.5 Press Freedom and the Constitutional Right to Information

Freedom of the press is not explicitly guaranteed in the Indian Constitution. Article 19(1)(a) guarantees freedom of speech and expression, and the Supreme Court has consistently held that press freedom is a component of this right. But the constitutional protection of press freedom is not categorical: it is subject to the same restrictions that apply to speech generally, and in practice the combination of legal tools available to restrict press freedom is extensive and has been extensively used.

India's ranking in international press freedom indices has fallen dramatically in recent years. Reporters Without Borders placed India at 159th out of 180 countries in its 2023 World Press Freedom Index, down from 140th in 2019 and from a much higher position in earlier years. The causes of this decline are multiple. Criminal defamation complaints against journalists, used to harass and financially burden critical reporters. FIRs under sedition, UAPA, and other security laws against journalists covering conflict zones, political protests, and government corruption. Income tax raids and enforcement agency investigations against media organizations with critical editorial positions. The demonetization-era collapse of advertising revenue, which made many media outlets dependent on government advertising, a dependence that creates obvious incentives for editorial self-censorship. The consolidation of media ownership in the hands of business conglomerates with significant government business interests, making genuine editorial independence structurally difficult.

The constitutional framework provides insufficient protection against these pressures. The requirement in Article 19(2) that restrictions on speech be "reasonable" is enforced through judicial scrutiny, but judicial scrutiny of press restrictions has been inconsistent and often

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deferential. The absence of a positive right to information in the Constitution leaves the RTI Act's protections dependent on ordinary legislative will rather than constitutional entrenchment. And the absence of any constitutional provision governing media ownership ensures that concentration of media in politically connected hands faces no constitutional challenge.

CHAPTER SIX

SOCIETAL VICTIMIZATION: HOW THE CONSTITUTIONAL ORDER FAILS THE PEOPLE

6.1 The Gap Between Constitutional Promise and Social Reality

The Constitution of India makes extraordinary promises. It promises a socialist, secular, democratic republic that will secure for all its citizens justice, social, economic, and political, liberty of thought, expression, belief, faith, and worship, equality of status and opportunity, and fraternity assuring the dignity of the individual and the unity and integrity of the nation. These are not modest aspirations. They represent one of the most ambitious constitutional commitments made by any state in the history of constitutionalism.

Seventy-five years after the Constitution came into force, the distance between these promises and the social reality experienced by the majority of India's population remains enormous. India has produced some of the world's largest fortunes. It has a technology sector that competes with the best in the world. It has a film industry of global reach, a space program of genuine achievement, and a democratic tradition that, whatever its imperfections, has survived decades and multiple transitions of power. These are real accomplishments.

But India also has, by multiple measures, among the world's worst outcomes in human development for a country of its income level. Child malnutrition rates that exceed those of sub-Saharan Africa. Maternal mortality that remains high despite decades of health programs. A public education system that is formally universal but practically inadequate in the sense that millions of children complete primary school without having acquired basic literacy or numeracy. Sanitation infrastructure that has improved significantly in recent years but remains inadequate for hundreds of millions of people. An air quality crisis in the Indo-Gangetic Plain that has created a public health emergency affecting hundreds of millions of people. Labour market conditions in which the informal economy employs the overwhelming majority of workers without job security, social protection, or meaningful enforcement of minimum wage laws.

The constitutional responsibility for this gap between promise and reality is complex. It would be unfair to blame the Constitution alone for outcomes that reflect also the poverty of the pre-independence starting point, the extraordinary difficulty of governing a country of India's size and diversity, and the complex global economic forces that shape development outcomes everywhere. But it is equally inadequate to excuse the constitutional framework from responsibility for outcomes that have been shaped by the choices embedded in that framework.

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6.2 The Scheduled Caste and Tribe Experience

For the Scheduled Castes and Scheduled Tribes, the constitutional promise was most specific and most urgent. B.R. Ambedkar, the principal drafter of the Constitution, was himself a Dalit who had experienced caste discrimination with brutal directness. He designed the constitutional provisions on reservations, fundamental rights, and the abolition of untouchability with the explicit purpose of dismantling the caste system and creating conditions of genuine equality for those whom the caste system had most severely oppressed.

Article 17 of the Constitution abolishes untouchability and makes its practice in any form an offence punishable by law. The Protection of Civil Rights Act of 1955 and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act of 1989 give legislative content to this constitutional prohibition. The reservation provisions of Articles 15 and 16 require reservations for Scheduled Castes and Tribes in public employment and educational institutions. These constitutional provisions represent a genuine commitment that was at the time of their adoption more progressive than the anti-discrimination law of most comparable countries.

Yet caste discrimination and caste violence remain pervasive facts of Indian social life seven decades after the Constitution's adoption. Annual reports of the National Crime Records Bureau document thousands of crimes against Dalits and Adivasis under the Atrocities Act each year, and there is strong reason to believe that reported crimes represent a small fraction of actual crimes. The Supreme Court's controversial judgment in Subhash Kashinath Mahajan versus State of Maharashtra in 2018, which introduced procedural safeguards against what the Court characterized as false cases under the Atrocities Act, was met with massive protests by Dalit organizations who argued that the Court had fundamentally misunderstood the reality of caste violence and the systematic failure of police and prosecution systems to protect Dalit victims. The Parliament subsequently overrode the judgment through the 2018 amendment to the Atrocities Act.

The Hathras case of 2020, in which a young Dalit woman was gang-raped and murdered by upper-caste men in Uttar Pradesh, and in which the local police cremated her body without family consent late at night in what critics described as a deliberate attempt to destroy evidence, illustrated with terrible clarity how the constitutional prohibition of caste discrimination exists alongside social and administrative structures in which caste hierarchy continues to operate with brutal force. The journalists who attempted to reach Hathras to report on the case were stopped by police roadblocks. An FIR was registered against the victim's family members for allegedly attempting to create communal tension. The district administration's handling of the case demonstrated institutional protection of the accused and criminalization of the victims' family rather than the equal protection of laws that the Constitution guarantees.

6.3 Women's Constitutional Rights and Their Practical Denial

The Constitution guarantees equality between men and women in Article 14, prohibits discrimination on grounds of sex in Articles 15 and 16, and the Supreme Court has read the right to life in Article 21 to encompass the right to live with dignity free from sexual violence. The Protection of Women from Domestic Violence Act, the Sexual Harassment of Women at

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Workplace Act, the amendments to the rape provisions of the Indian Penal Code following the 2012 Delhi gang rape case, and numerous other legislative measures give content to the constitutional commitment to women's equality.

But India remains by multiple measures a deeply unequal society for women. Gender-based violence statistics are alarming: the National Crime Records Bureau records hundreds of thousands of crimes against women annually, with crimes against women constituting a rising proportion of all reported crimes. The conviction rate for rape is low. The practical barriers to reporting, including social stigma, family pressure, police indifference or hostility, slow court proceedings, and the trauma of cross-examination, mean that the gap between reported and actual crimes is likely very large. The persistence of dowry deaths, honour killings, female foeticide, and child marriage, despite constitutional provisions and legislative prohibitions against all of these practices, demonstrates that formal constitutional and legal equality exists alongside profound social inequality that the state's administrative and enforcement machinery has been inadequate to address.

The patriarchal assumptions encoded in law have been contested and slowly eroded through feminist litigation and legislative advocacy. The Supreme Court's Vishakha judgment in 1997, which created the framework for addressing sexual harassment at the workplace in response to the gang rape of a social worker in Rajasthan, was a landmark of feminist constitutional jurisprudence. But the Vishakha framework took seventeen years to be converted into legislation, during which period it operated as a judicially-created quasi-legislative framework of uncertain legal status. The #MeToo movement of 2018 revealed the inadequacy of institutional mechanisms for addressing sexual harassment even in elite urban professional settings, let alone in the informal economy, agricultural settings, and domestic contexts where most Indian women work.

6.4 The Farmer's Crisis and Constitutional Neglect

The condition of Indian farmers represents one of the most acute failures of the constitutional and policy framework. Agriculture employs, directly or indirectly, approximately half of India's workforce, while contributing only approximately 15-18 percent of GDP. This structural imbalance reflects decades of policy choices that have prioritized industrial and service sector development over agricultural transformation. The farmers who won independence for India through their participation in the nationalist movement, and who were promised land reform, remunerative prices, credit access, and social security by the Directive Principles of the Constitution, have been systematically marginalized in the development process.

Farm debt and farmer suicides represent the most acute symptom of this crisis. The National Crime Records Bureau's data on farmer suicides, which documents more than 10,000 farmer suicides per year in most recent years, has been criticized for undercounting because of definitional disputes about who counts as a farmer and the stigma that discourages families from reporting suicides as such. Organizations tracking farmer suicides suggest that actual numbers may be much higher. The causes are multiple: indebtedness, crop failure, inadequate prices, lack of insurance, broken irrigation infrastructure, costly inputs, and the structural vulnerability of small farmers to market volatility that they have no tools to manage.

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The three farm laws of 2020 that triggered the remarkable 13-month farmers' protest movement represented the government's attempt to address some aspects of the agricultural crisis by liberalizing the market for agricultural produce. Whatever their merits and deficiencies as policy, they were enacted through a constitutional process that the farmers experienced as one in which their interests had not been heard. The voice vote passage of the laws in Parliament, in which the presiding officer declared a majority on division without actually conducting the division that opposition members demanded, became a symbol of parliamentary procedure being used to foreclose debate rather than enable it.

The farmers' protest movement, which saw hundreds of thousands of farmers, predominantly from Punjab, Haryana, and Uttar Pradesh, camping at the borders of Delhi in extraordinary conditions through a North Indian winter, represents one of the most significant exercises of the constitutional right to protest in independent India's history. The government's initial response, which included the deployment of water cannon, the digging of ditches and erection of concrete barriers at protest sites, the use of the UAPA against farmers' union leaders, and the characterization of protesters as Khalistani separatists by government spokespersons, illustrated how the state's security apparatus can be deployed against legitimate constitutional dissent.

6.5 Urban Poverty and the Demolition Architecture

Urban India's poor, the inhabitants of informal settlements, pavement dwellers, construction workers, domestic workers, street vendors, ragpickers, and the vast informal service sector that keeps India's cities functioning, represent another population for whom the constitutional promise of equality and dignity has remained largely theoretical. They inhabit the most precarious position in India's urban economy: essential to its functioning, invisible to its planning, and consistently victimized by its administrative apparatus.

Demolition of informal settlements has been a persistent feature of urban governance in India since independence. The demolition of Yamuna Pushta in Delhi in 2004, which displaced more than 300,000 people, many of whom had lived there for decades, and provided wholly inadequate resettlement, proceeded under court orders obtained through PIL litigation by middle-class residents and environmental organizations. The Supreme Court sanctioned the demolition on environmental and public order grounds, without adequate attention to the constitutional rights of the displaced residents, who were among the most vulnerable people in the city.

The phenomenon of "bulldozer justice" that became prominent in several BJP-governed states beginning around 2020, in which the homes and businesses of people accused or convicted of criminal offences, or in some cases simply associated with political protests, were demolished on purported grounds of illegal construction, represents a new and more explicitly punitive dimension of the demolition architecture. The Supreme Court's intervention in this matter in 2024, with its judgment that demolitions cannot be used as punitive measures without due process and that executive-ordered demolitions of people's homes violate Article 21, was significant. But the judgment arrived after thousands of people had already had their homes demolished, and its implementation has been uncertain.

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CHAPTER SEVEN

INDIA'S NEIGHBOURHOOD POLICY AND THE CONSTITUTIONAL DEFICIT IN FOREIGN AFFAIRS

7.1 The Constitutional Framework of Foreign Policy

The Indian Constitution vests the conduct of foreign affairs in the Union executive, with Parliament providing oversight through its general legislative and budgetary powers and the Rajya Sabha's specific role in ratifying international treaties. The constitutional framework treats foreign policy as essentially an executive prerogative, subject to parliamentary oversight but not to the kind of detailed constitutional scrutiny that applies to domestic legislation. This design reflects the standard model of most parliamentary democracies, in which the executive's foreign policy discretion is broadly respected.

But the consequences of this broad executive discretion in foreign policy, when exercised by governments whose domestic political priorities generate nationalist and majoritarian pressures, have been serious for India's relationships with its neighbours and for India's international standing more generally. India's neighbourhood relations have been characterized throughout the post-independence period by a mixture of genuine engagement and pronounced difficulties, difficulties that reflect not merely the geopolitical challenges of a large state surrounded by smaller and sometimes hostile neighbours but also the constitutional and political culture of a state that has not consistently developed the institutional capacity for patient, multi-dimensional diplomacy that complex neighbourhood relations require.

7.2 The Pakistan Problem and the Constitutional-Political Connection

India's relationship with Pakistan is the defining bilateral relationship of the subcontinent, and its pathology is connected to the constitutional and political culture of both states in ways that deserve deeper analysis than foreign policy commentary typically provides. The partition of British India in 1947 created two states whose territorial claims, minority populations, and foundational national narratives were in direct conflict. The unresolved question of Jammu and Kashmir, which has been the occasion of three wars and a low-intensity conflict lasting decades, is both the most visible symbol of this conflict and its most intractable element.

The Indian Constitution's treatment of Jammu and Kashmir has been uniquely fraught. Article 370, which gave Jammu and Kashmir a special status with its own constitution and substantial autonomy except in the areas of defence, foreign affairs, finance, and communications, represented a political settlement of the integration of a state whose ruler had acceded to India but whose Muslim majority population's preferences had never been democratically ascertained through a promised plebiscite. The plebiscite was never held, a fact that Pakistan continued to invoke and India continued to contest.

The abrogation of Article 370 in August 2019 and the bifurcation of the state into two Union Territories, Jammu and Kashmir and Ladakh, represented the most dramatic constitutional change to a component unit since the reorganization of states on linguistic lines in the 1950s. The

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constitutional validity of the abrogation was challenged before the Supreme Court, which in December 2023 upheld the abrogation by a five-judge unanimous bench, holding that the President's power to abrogate Article 370 was constitutional. The judgment was lengthy and careful in its legal reasoning but has been extensively criticized by constitutional scholars who argue that it misread the constitutional provisions on special status and gave the executive an effectively unlimited power to change the constitutional status of any state.

The human impact of the post-August 2019 policy in Jammu and Kashmir was severe. An unprecedented communications blockade, during which mobile internet and even fixed-line communications were suspended for months, represented a restriction on fundamental rights of information and expression that the Supreme Court, in Anuradha Bhasin versus Union of India in 2020, acknowledged raised serious constitutional concerns while declining to order the immediate restoration of internet access. Political leaders including three former Chief Ministers were detained under the Public Safety Act. The full restoration of statehood, promised during the parliamentary debate on the J&K Reorganization Act, remained outstanding as of early 2026.

The constitutional changes in Kashmir have further complicated an already deeply damaged relationship with Pakistan. They removed the legal framework that provided at least a theoretical basis for discussions about the state's future status. They intensified Pakistani claims of Indian intransigence on the Kashmir question. And they demonstrated to the international community a willingness to change the constitutional status of a territory whose political integration remains disputed, in a manner that privileged domestic nationalist political calculations over the patient diplomatic engagement that might have advanced prospects for genuine resolution.

7.3 The Bangladesh and Myanmar Borderlands

India's relationship with Bangladesh illustrates a different dimension of the constitutional-foreign policy connection. Bangladesh's extraordinary relationship with India, which includes Indian midwifery at Bangladesh's birth in 1971, extensive economic integration, shared river systems, and a complex history of migration that has made Bangladeshi migration to India a persistent source of political controversy, requires from India a foreign policy of exceptional sensitivity and patience.

The National Register of Citizens exercise in Assam, which identified approximately 1.9 million people as potentially non-citizens requiring further proof of their citizenship, created significant diplomatic tension with Bangladesh, which denied that it had any citizens among those excluded from the NRC. The combination of the CAA with the NRC raised fears in Bangladesh and among Bangladesh-origin minorities in India that India was creating a mechanism for the expulsion of Muslim migrants to Bangladesh, which Bangladesh would be unwilling to accept, creating a potential humanitarian crisis on the border.

The constitutional provisions on citizenship, particularly the jus soli citizenship provisions that were progressively restricted through the Citizenship (Amendment) Act of 2003 and then the CAA of 2019, have created a citizenship architecture that is increasingly premised on ethnic and religious identity rather than territorial connection. This constitutional shift has direct implications for India's relationships with its neighbours, particularly those with significant

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Hindu or Muslim minorities whose members may have migrated to India historically, whose citizenship status is now more uncertain, and whose treatment becomes a live issue in bilateral diplomatic relations.

7.4 China, Constitutional Nationalism, and Strategic Deficit

India's relationship with China represents perhaps the greatest single failure of India's strategic culture, a failure that has constitutional and political dimensions that deserve direct confrontation. The 1962 war, in which China defeated India comprehensively in a border conflict over territories that India had inadequately prepared to defend, represented a shattering of the Nehruvian foreign policy vision. The constitutional framework of broad executive discretion in foreign policy meant that the disastrous strategic miscalculations of the Nehru government, including the Forward Policy of establishing military posts in contested border areas without the logistical capacity to supply or defend them, proceeded without parliamentary scrutiny or constitutional check.

The decades of border management that followed 1962, including the Agreements of 1993 and 1996 on maintenance of peace and tranquillity in border areas, the Agreements of 2005 and 2012 on political parameters and guiding principles for boundary settlement, represented a pragmatic approach to managing a boundary dispute that both sides recognized would require patient negotiation. These agreements broke down in the Galwan Valley clash of June 2020, in which Indian and Chinese soldiers engaged in hand-to-hand combat resulting in the deaths of twenty Indian soldiers, the first combat deaths on the Sino-Indian border in forty-five years. The Chinese incursion into Indian-claimed territory at Depsang, Gogra, and other points in eastern Ladakh created a new situation of contested control over significant areas.

The constitutional framework's broad executive discretion meant that the government's handling of the Galwan crisis, including the decision to acknowledge the deaths only gradually, the initial official statements that denied that any incursion had occurred, and the subsequent management of the standoff through diplomatic and military channels, proceeded without parliamentary scrutiny. The opposition's demands for a full parliamentary debate on the border situation were deflected. The government's claim that no Chinese territorial occupation had occurred was subsequently contradicted by satellite imagery and by statements of retired military officers and intelligence officials. The constitutional mechanisms for parliamentary oversight of executive foreign policy decisions were inadequate to the task of holding the government accountable for what critics described as a significant strategic failure.

7.5 Nepal, Sri Lanka, and the Politics of Cultural Nationalism

India's relationships with Nepal and Sri Lanka illustrate how the constitutional culture of Hindu nationalism, even when not directly expressed in constitutional provisions, shapes the foreign policy environment in ways that damage bilateral relationships. Nepal, a historically Hindu kingdom that shared deep cultural, religious, and familial ties with India across its northern border, went through a revolutionary political transformation in the 2000s that abolished the monarchy and established a secular federal republic. India's handling of Nepal's political transition was widely criticized in Nepal as heavy-handed, with Indian officials frequently

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meeting Nepali political leaders in ways that Nepalis experienced as interference in domestic politics, and the 2015 blockade of Nepal's borders (which India denied was a blockade but which effectively cut Nepal's supplies during a post-earthquake reconstruction emergency) creating the most severe damage to India-Nepal relations in decades.

The historical background of India-Nepal relations includes the 1950 Treaty of Peace and Friendship, which gives Indian and Nepali citizens reciprocal rights of residence, property ownership, and employment in each other's countries. This treaty, while beneficial in many respects, has been criticised by Nepali nationalists as an instrument of Indian hegemony that constrains Nepal's foreign policy independence and gives India a legal basis for interference in Nepal's internal affairs. Nepal's increasing engagement with China, including the Belt and Road Initiative connectivity projects, is in part a response to the experience of Indian dominance and a strategic diversification that India's heavy-handed neighbourhood policy has actively encouraged.

CHAPTER EIGHT

THE CASE FOR TOTAL CONSTITUTIONAL OVERHAUL: THEORIES, ARGUMENTS, AND PRECEDENTS

8.1 The Philosophical Case for Constitutional Replacement

The question of whether a constitution should be reformed incrementally or replaced entirely is one of the fundamental questions of constitutional theory, and it has generated extensive philosophical literature that is directly relevant to the Indian situation. The dominant tradition of constitutional thought in the Anglo-American world has been incremental and conservative: constitutions are precious achievements that should be treated with respect, amended carefully, and replaced only in the most extreme circumstances. Edmund Burke's critique of the French revolutionary constitution-making as a reckless destruction of inherited wisdom in favour of abstract theory has been enormously influential in constitutional thinking, and Burke's caution has been reinforced by the many examples of revolutionary constitution-making that produced worse outcomes than the systems they replaced.

But there is a counter-tradition, equally distinguished, that argues for the constitutional moment as a genuine political and moral possibility. Bruce Ackerman's theory of constitutional moments, developed in We the People, identifies those rare periods when democratic deliberation generates sufficient popular energy and political consensus to produce transformative constitutional change. Ackerman argues that such moments require institutional recognition and should be facilitated rather than obstructed by constitutional conservatives who prefer the status quo. Jon Elster's work on constitution-making distinguishes between upstream constraints on constitutional design (the social and political conditions at the moment of drafting) and the downstream constraints created by the choice of drafting procedures, arguing that the legitimacy of constitutional outcomes depends critically on the deliberativeness and inclusivity of the process through which they were produced.

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8.2 The Constituent Power and the People

The concept of constituent power, developed philosophically by Emmanuel Sieyes in his revolutionary pamphlet What is the Third Estate and elaborated by subsequent theorists including Carl Schmitt and more recently Martin Loughlin and Neil Walker, distinguishes between the power to make a constitution (constituent power) and the power exercised under a constitution (constituted power). Constituent power, in the classical formulation, belongs to the people as a whole and cannot be alienated to any constituted authority, including the Parliament established by the existing constitution.

This distinction is relevant to the Indian situation in a specific way. Article 368 of the Constitution establishes the amendment procedure that Parliament must follow to change the Constitution. Article 368 can be used to make very significant changes: it has been used, with and without the special majority and state ratification requirements for the most significant amendments, to change almost every major provision of the original Constitution. But the Supreme Court in Kesavananda Bharati established that Article 368, despite its apparent comprehensiveness, cannot be used to destroy the "basic structure" of the Constitution. Certain features, including democracy, the supremacy of the Constitution, judicial review, the separation of powers, secularism, and federalism, are beyond the reach of parliamentary amendment.

This doctrine is constitutionally important and has been genuinely protective against the most extreme forms of constitutional subversion. But it creates a theoretical difficulty for those who argue that the Constitution needs not merely amendment but replacement. If the basic structure doctrine prevents Parliament from touching the fundamental features of the Constitution, how can the fundamental features be changed when they have themselves become sources of constitutional dysfunction? The answer must lie in the constituent power itself: a new constituent process, genuinely democratic and fully representative, generating a new constitution by a process that claims legitimacy from the people rather than from the existing constitutional order.

8.3 Precedents for Constitutional Replacement: Comparative Lessons

The international precedents for constitutional replacement are instructive. South Africa's transition from apartheid to democracy produced a new constitution through a process that combined interim constitutional arrangements, multi-party negotiation, a freely elected constituent assembly, public participation through millions of submissions, and certification by a newly created Constitutional Court. The South African Constitution of 1996 is by many assessments the most progressive constitutional document in the world, and the process through which it was produced is widely regarded as a model of deliberative constitution-making.

Bolivia's process of constitution-making under Evo Morales produced the Constitution of 2009, which recognized indigenous peoples' rights, established plurinationalism as the state's organizing principle, and incorporated principles of indigenous legal traditions into the constitutional framework. The process was controversial and imperfect, but it represented a genuine attempt to include historically marginalized populations in the constitution-making process rather than treating them as objects of constitutional concern.

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Iceland's crowdsourced constitutional process of 2011-2012, while ultimately unsuccessful in producing an enacted constitution, represented an extraordinary experiment in participatory constitution-making in which a randomly selected Citizens' Assembly and a directly elected Constitutional Council produced a draft constitution through an open process with extensive online participation. The failure to translate the draft into an enacted constitution reflected political dynamics in Iceland's Parliament rather than public rejection of the constitutional content.

Kenya's constitutional replacement in 2010, following the post-election violence of 2007-2008, produced a new constitution through a process of extensive public consultation, parliamentary debate, and final approval through a national referendum. The Kenyan Constitution of 2010 is widely regarded as one of Africa's most progressive constitutional instruments, with strong provisions on devolution, human rights, gender equality, and accountability.

These examples share certain characteristics that distinguish them from simple parliamentary amendment: genuine popular participation in the constitution-making process, representativeness of the body that drafts the constitution, transparency in the deliberative process, and mechanisms for popular ratification. They demonstrate that constitutional replacement is possible, that it can produce superior constitutional outcomes, and that the process through which replacement occurs shapes the legitimacy and quality of the resulting document.

8.4 The Ambedkarite Critique Revisited

B.R. Ambedkar himself, in his final speech to the Constituent Assembly on November 25, 1949, expressed reservations about the Constitution he had just drafted that are sometimes quoted but rarely taken seriously enough. Ambedkar warned that democracy in India was only a "top-dressing on an Indian soil which is essentially undemocratic." He warned that the continued existence of democracy could not be taken for granted. He observed that political democracy had been established while the foundations of economic and social democracy remained unbuilt. And he made the remarkable statement that if the existing political parties "prove themselves incompetent to serve the people or the country," the people of India would have not only the right but the duty to "blow up" the existing political arrangements.

This statement, coming from the principal drafter of the Constitution, is not a counsel of nihilism. It is a recognition that constitutional democracy is not self-sustaining, that its maintenance requires active democratic citizenship, and that when the institutions of constitutional democracy fail in their fundamental purpose of serving the people, the people retain the constituent power to remake those institutions. Ambedkar's warning about the undemocratic soil on which the democratic top-dressing had been laid has proven prophetic: seven decades of formal democratic governance have not fundamentally transformed the caste hierarchy, the gender hierarchy, or the class hierarchy on which Indian society is organized.

8.5 The Specific Case for Structural Reform

Whether the appropriate response is comprehensive constitutional replacement or fundamental structural reform within the existing constitutional framework depends on practical and political

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judgments as well as philosophical ones. The case for replacement is philosophically compelling: the colonial inheritance is so deep, the structural deficiencies so fundamental, and the accumulated amendments so numerous and sometimes contradictory that a fresh start through a genuinely democratic constituent process might produce a more coherent, more progressive, and more legitimate document than any achievable through incremental amendment.

But the case for fundamental structural reform within the constitutional framework is also serious. Constitutional replacement requires political conditions that may not be achievable in India's current political environment. A government committed to constitutional replacement would need to organize a genuinely representative constituent process, resist the temptation to use that process to advance partisan interests, and accept the constraints of whatever new constitution emerged even if those constraints were unwelcome. These requirements are demanding, and the history of constitutional replacement processes shows that they frequently fail to meet them, producing new constitutions that serve the interests of the current power-holders rather than the long-term constitutional needs of the people.

The minimum structural reforms that are necessary, regardless of whether the ultimate goal is replacement or fundamental amendment, include the following: abolition or fundamental transformation of the Governor's office to remove its potential for central government abuse; reform of the emergency powers provisions to strengthen procedural safeguards and substantive limits; a genuine federal fiscal framework in which states have adequate own revenue sources and reduced dependence on central transfers; fundamental police reform to transform a colonial law enforcement apparatus into a rights-protecting democratic police service; constitutional entrenchment of press freedom with meaningful anti-concentration provisions; electoral finance reform with mandatory public disclosure and spending limits enforced by a genuinely independent body; reform of the anti-defection provisions to restore legislators' independence while addressing the legitimate concern about government instability; constitutional recognition of the right to information with entrenchment that prevents legislative dilution; reform of the bail and pretrial detention system to make liberty the default and detention the exception rather than the reverse; and a fundamental reconception of the state's relationship with its citizens in tribal areas, Northeastern states, and areas under extended military deployment, replacing the AFSPA and related instruments with a rights-respecting framework that acknowledges the legitimate security concerns while refusing to sacrifice constitutional principles in their address.

8.6 The Decolonization Agenda: Beyond Symbolic Change

The renaming of criminal codes, the Hindi-ification of institutional nomenclature, and the nationalist rhetoric about civilizational revival represent a form of symbolic decolonization that leaves the substance of colonial legal and administrative culture largely untouched. Genuine decolonization of the constitutional and legal order requires something much more fundamental: a reconception of the relationship between state and citizen that replaces the colonial model of authority and compliance with a democratic model of accountability and participation.

This reconception requires examining every major legal and administrative institution with the question: does this institution serve the citizen or the state? Does it strengthen accountability or evade it? Does it extend democratic participation or limit it? Does it protect rights or threaten

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them? These questions, applied rigorously to the entirety of India's legal and constitutional architecture, would produce a reform agenda of extraordinary scope and ambition.

Franz Fanon's observation in The Wretched of the Earth that the nationalist elite that inherits the colonial state from the departing colonizers tends to maintain the colonial structures because those structures serve their interests, while simply replacing European personnel with indigenous personnel at the apex, is applicable to the Indian situation. The IAS replaced the ICS. The UAPA replaced the Rowlatt Act's structure. The Governor's office maintained the Viceroy's relationship to provincial governments. The Official Secrets Act remained. The sedition law remained. The preventive detention provisions were constitutionalized rather than abolished. The nationalist elite that led the independence movement, and the subsequent political elites that have governed India through the decades, have had insufficient incentive to dismantle the colonial apparatus because that apparatus has been enormously useful to them.

8.7 The Theory of Constitutional Moments Applied to India

Ackerman's theory of constitutional moments requires that three conditions be met for a constitutional transformation to be genuinely democratic: a period of heightened popular political engagement, a political debate that forces fundamental constitutional questions into the public sphere, and institutional mechanisms through which the popular will expressed in that debate can be translated into constitutional change. India has experienced moments of heightened popular political engagement, most notably during the independence movement itself, during the anti-emergency movement of 1975-1977, and most recently during the farmers' protest movement of 2020-2021 and the CAA protests of 2019-2020. But the institutional mechanisms for translating popular energy into constitutional change have been inadequate.

The existing constitutional amendment procedure, which requires parliamentary supermajorities and state ratifications for the most significant changes but which has been used to make hundreds of amendments of varying significance, reflects a model in which constitutional change is a parliamentary rather than a popular activity. Referendums on constitutional questions are not provided for in the existing constitutional framework except as part of state boundary change procedures. The people, who in the constitutional theory are the source of the Constitution's authority, have no direct mechanism for expressing their view on constitutional questions except through the election of parliamentary representatives.

A genuinely democratic constitutional reform process would require creating such mechanisms: a constitutional convention or constituent assembly that is genuinely representative of India's population in all its diversity, that deliberates in public, that solicits and seriously engages with submissions from citizens and civil society organizations, that is not dominated by the existing political parties, and that produces a draft that is submitted to popular ratification through a referendum before coming into force. This process would be unprecedented in Indian constitutional history. It would be politically difficult to organize. It would take years. It would require overcoming the resistance of established political interests that benefit from existing constitutional arrangements. But it represents the only legitimate path to a constitution that could genuinely claim to be made by the people for the people rather than for and by the political elite.

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8.8 The Jurisprudence of Constitutional Failure

In the jurisprudential literature, there is growing attention to the concept of "constitutional failure," which refers not merely to the failure of a constitution to achieve its stated purposes but to the failure of a constitution to maintain the conditions of its own legitimacy. A constitution fails, in this sense, when it is consistently used to undermine rather than protect the rights it guarantees, when its institutions consistently serve the interests of the powerful rather than the weak, when its procedures for accountability consistently produce impunity rather than justice, and when the gap between its formal promises and its practical outcomes becomes so wide that citizens can no longer regard it as a genuine framework for their governance.

Tom Ginsburg and Aziz Huq, in their work How to Save a Constitution, distinguish between hard coups, which are sudden and violent, and constitutional retrogression, which is the gradual erosion of democratic norms and institutions through mechanisms that maintain formal constitutional continuity. Retrogression is in many ways more dangerous than the coup because it does not trigger the clear democratic legitimacy crisis that a coup produces. The institutions nominally continue to function. Elections nominally continue to be held. Courts nominally continue to sit. But the substantive content of democratic governance, the conditions under which meaningful electoral competition can occur, under which courts can make independent judgments, and under which citizens can exercise genuine political voice, gradually deteriorates.

India's constitutional condition in 2026 displays many of the markers of constitutional retrogression identified in the comparative literature: declining press freedom, increased use of investigative agencies against political opponents, pressure on judicial independence, legislative changes that reduce institutional checks, and the normalization of executive dominance that would have been constitutionally unacceptable in earlier periods. This does not mean that Indian democracy is finished or that constitutional recovery is impossible. But it does mean that the situation requires urgent attention to the structural causes of retrogression rather than merely its symptoms.

8.9 The Specific Constitutional Amendments Required as Minimum Reform

Building on the analysis across the eight chapters of this part, the following constitutional amendments represent the minimum necessary to address the most urgent structural failures of the constitutional order. These are not presented as a final or complete program of reform but as the structural floor below which no reform agenda that takes constitutional democracy seriously can fall.

First, Article 370 and the process of its abrogation demand a reconsideration that addresses the democratic deficit in the integration of Jammu and Kashmir. The constitutional relationship between the Union and the states of the Northeast, and the constitutional framework for addressing armed insurgency and political alienation in those states, require comprehensive reconceptualization.

Second, the emergency provisions of Articles 352, 356, and 360 require significant strengthening of procedural and substantive safeguards. The threshold for invoking emergency must be made

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more demanding. The parliamentary oversight requirements must be strengthened. The grounds for imposing President's Rule must be made more specific and subject to genuine judicial review. The duration of emergency must be limited more strictly.

Third, the Governor's office requires fundamental reform. The Governor should be appointed through a process that genuinely involves the state government's concurrence, should have a fixed term of five years removable only by a process analogous to judicial removal, and should have significantly reduced discretionary powers, particularly in relation to government formation after inconclusive elections and in relation to the reservation of bills.

Fourth, the constitutional basis for the anti-defection law in the Tenth Schedule must be reconsidered. While the problem of opportunistic party-switching is real, the solution of making legislators hostage to party discipline is worse than the disease it was designed to cure. A reformed anti-defection provision should distinguish between a change of party affiliation for material gain (the core mischief) and a genuinely conscientious vote against the party position (which should be protected by the right of free vote).

Fifth, the constitutional framework for freedom of the press must be strengthened. Article 19 should be amended to include a specific constitutional protection for press freedom, with constitutional limits on media ownership concentration and a constitutional right of access to information that cannot be diluted by ordinary legislation.

Sixth, the constitutional framework for the police and criminal justice system must be fundamentally reconceived. The constitutional provisions on preventive detention, particularly Article 22 and the framework it enables, must be substantially amended to strengthen the rights of the detained, to limit the grounds and duration of preventive detention, and to provide meaningful judicial oversight of detention decisions.

Seventh, the fiscal framework of Indian federalism must be constitutionally reformed to give states adequate own-revenue sources, to constitutionally entrench the Finance Commission's independence and recommendations as binding rather than advisory, and to create a constitutional framework for centre-state fiscal relations that treats states as genuine partners rather than subordinate units.

Eighth, the constitutional provisions for scheduled castes and tribes must be revisited and strengthened in light of seven decades of experience that demonstrates the inadequacy of existing provisions. The constitutional abolition of untouchability in Article 17 must be given more effective institutional expression. The Atrocities Act must be constitutionally entrenched against legislative or judicial dilution. Land rights, forest rights, and water rights of tribal communities must receive explicit constitutional recognition.

8.10 The New Constitutional Vision: Beyond British Templates

The ultimate aim of constitutional reform in India must be a constitution that is genuinely Indian, not in the sense of cultural nationalism that privileges one community's cultural heritage over others', but in the sense of being designed for India's specific challenges, resources, social

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structures, and democratic aspirations. Such a constitution would recognize and work with India's extraordinary diversity rather than seeking to manage or contain it. It would distribute power not merely vertically between centre and states but horizontally among the legislature, executive, judiciary, independent constitutional bodies, civil society, and ultimately the people themselves. It would create institutions of accountability that are structurally resistant to capture by the powerful. It would protect rights not merely formally but substantively, through institutional mechanisms that make those rights practically effective for those who most need them.

Such a constitution would not look like the Government of India Act 1935 with democratic modifications. It would not look like the Westminster model adapted for South Asian conditions. It would reflect the accumulated experience of seven decades of constitutional democracy, the lessons of what has worked and what has failed, the insights of India's remarkable tradition of social activism and constitutional litigation, and the aspirations of the hundreds of millions of Indians whose lives have been shaped, often harshly, by the constitutional order they inherited but never chose.

The poet Rabindranath Tagore, in his famous prayer in Gitanjali, wrote of a heaven of freedom where the mind is without fear and the head is held high, where knowledge is free, where the world has not been broken up into fragments by narrow domestic walls, where words come out from the depth of truth, and where the clear stream of reason has not lost its way into the dreary desert sand of dead habit. Tagore's vision was not a constitutional program, but it captures something essential about what a genuine constitutional democracy would look like: a system in which the people are genuinely free, genuinely informed, genuinely equal, and genuinely capable of governing themselves.

That vision remains unrealized. The gap between Tagore's heaven of freedom and the constitutional reality of twenty-first-century India is vast. But the gap is not unbridgeable. It is bridgeable by the same democratic energy that has repeatedly asserted itself in Indian constitutional history, from the anti-Emergency movement to the RTI movement to the farmers' protest, by the same intellectual tradition that produced Ambedkar's constitutional vision and Bhagwati's public interest litigation jurisprudence, by the same civil society that has maintained democratic resistance in the face of institutional capture, and by the same people who have refused, despite decades of disappointment, to give up on the constitutional promise that was made to them in 1950.

CHAPTER NINE (EXTENDED ANALYSIS)

THE THEORETICAL SCAFFOLDING: JURISPRUDENTIAL FRAMEWORKS FOR CONSTITUTIONAL CRITIQUE AND REFORM

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9.1 Natural Law and the Constitutional Minimum

The natural law tradition in jurisprudence, from Thomas Aquinas through John Finnis and Lon Fuller, argues that law derives its authority not merely from its formal enactment by sovereign power but from its conformity with a moral order that exists independently of human legislation. An unjust law, in the Thomistic formulation, is no law at all. Fuller's secular version of this insight, in The Morality of Law, identifies the internal morality of law as consisting of eight requirements: generality, promulgation, non-retroactivity, clarity, non-contradiction, possibility of compliance, stability, and congruence between official action and declared rule. Law that systematically fails to meet these requirements fails not merely as policy but as law.

Applied to the Indian Constitution's provisions and their application, the natural law critique identifies numerous failures of congruence between declared constitutional commitment and official action. The constitutional guarantee of due process under Article 21 is incongruent with UAPA bail provisions that effectively reverse the presumption of innocence. The constitutional prohibition of untouchability in Article 17 is incongruent with official acquiescence in caste violence. The constitutional guarantee of freedom of expression in Article 19 is incongruent with sedition prosecutions for political speech. The constitutional commitment to a socialist republic in the Preamble is incongruent with policies that have massively widened economic inequality.

These incongruences are not merely policy failures. They represent failures of constitutional law's fundamental claim to moral authority. A constitution that consistently fails to deliver on its most fundamental promises eventually ceases to generate the kind of civic allegiance that constitutional democracies require. Citizens who experience the gap between constitutional promise and constitutional reality as permanent and structural have reason to question whether the constitution genuinely represents a framework for their governance rather than an ideology that legitimizes the governance exercised over them.

9.2 Legal Positivism and Its Limits

H.L.A. Hart's legal positivism, which defines law as the rules recognized by the officials of a legal system as binding according to the system's rule of recognition, provides a different but complementary angle of critique. From a positivist perspective, the question is not whether Indian constitutional law is just, but whether it is effectively law at all, whether the rules it establishes are consistently applied by the officials who are supposed to apply them, and whether there is a coherent rule of recognition that determines which norms count as valid law.

The Indian constitutional system faces positivist challenges of two kinds. The first is the problem of selective enforcement: constitutional rights and criminal law provisions are systematically applied differently to different categories of persons, with the powerful enjoying practical immunity from norms that are applied harshly to the powerless. When constitutional norms are selectively enforced, the practical rule of recognition that officials apply is different from the formal constitutional text, and the system's claim to be governed by law rather than by power is compromised.

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The second is the problem of constitutional ambiguity deliberately maintained: the "basic structure" doctrine, while genuinely important, leaves uncertain which constitutional features are protected and which are amenable to parliamentary amendment, creating a zone of interpretive uncertainty that governments can exploit. The expansion of the money bill classification under Article 110, used by the government after 2014 to pass significant legislation through the Lok Sabha alone by calling it a money bill and thereby bypassing the Rajya Sabha, illustrates how ambiguity can be exploited to circumvent constitutional constraints. The Supreme Court's delayed response to challenges against this practice, and its ultimate ruling in Rojer Mathew versus South Indian Bank that the Finance Act of 2017 was not a money bill but that this finding would not invalidate the provisions passed through it, created a result that satisfied no one from a rule-of-law perspective.

9.3 Critical Legal Studies and the Constitution's Class Dimension

The critical legal studies movement that emerged in American law schools in the 1970s, associated with scholars like Roberto Unger, Duncan Kennedy, Mark Tushnet, and Catharine MacKinnon, argued that law is not a neutral system of rules but a political instrument that systematically favours certain interests over others, specifically the interests of capital over labour, of property over poverty, and of existing social hierarchies over those who challenge them. This critique, while developed primarily in the American context, has significant resonance in India.

The Indian Constitution's protection of property rights, which were originally fundamental rights in Articles 19(1)(f) and 31, and which were removed from the fundamental rights chapter by the 44th Amendment of 1978 but continue in the Constitution as Article 300A, has been a persistent site of class conflict. Land reform legislation, intended to redistribute agricultural land from absentee landlords to cultivating tenants and landless labourers, was repeatedly challenged by landlords as violations of the right to property. The early Supreme Court judgments that struck down land reform laws, culminating in the State of West Bengal versus Mrs. Bela Banerjee judgment of 1954, were overcome by constitutional amendments that placed land reform laws in the Ninth Schedule and thus purportedly outside judicial review.

The Ninth Schedule phenomenon itself illustrates the critical legal studies point about law's political dimension. The Ninth Schedule, added by the First Amendment of 1951, creates a category of laws immune from fundamental rights challenge. It was created specifically to protect land reform laws from judicial review. Over time, the Schedule was expanded to include laws that had nothing to do with land reform: laws protecting industrial regulation, laws protecting commercial monopolies, laws protecting reservation schemes. The Supreme Court's judgment in I.R. Coelho versus State of Tamil Nadu in 2007, which held that laws placed in the Ninth Schedule after April 24, 1973 (the date of the Kesavananda Bharati judgment) were subject to judicial review if they violated the basic structure, attempted to restore some judicial oversight. But the history of the Ninth Schedule demonstrates how constitutional provisions created for one purpose can be expanded and manipulated to serve very different purposes.

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9.4 Republican Constitutionalism and the Problem of Domination

Philip Pettit's republican political theory, which defines freedom not as mere non-interference but as non-domination, the absence of any relationship in which one party has the arbitrary power to interfere with another's choices, provides a valuable framework for evaluating constitutional systems. A republican constitution, on Pettit's account, must not merely protect individuals from actual interference with their liberty but must structure social and political relationships so that no person or institution has the arbitrary power to interfere with others' choices even if they choose not to exercise that power. The mere existence of such power is an affront to freedom, because those subject to it must adjust their behaviour to avoid triggering the powerful party's displeasure.

Evaluated by this standard, the Indian constitutional system generates multiple forms of domination that its formal guarantees of liberty fail to prevent. The employer's domination over the worker in the informal economy, in which the worker's dependence on their employer for livelihood prevents them from asserting their legal rights, creates a form of private domination that the state has been inadequate to address. The landlord's domination over the agricultural tenant, in which the threat of eviction prevents the tenant from exercising their legal rights to minimum wages or regulated tenancies, represents another form. The caste hierarchy's domination over Dalit individuals, in which the entire social structure of the village creates conditions under which Dalits cannot safely assert their constitutional rights, represents perhaps the most pervasive form.

The state itself, through its investigative agencies, its police forces, its revenue bureaucracy, and its permitting apparatus, dominates citizens through the arbitrary power to initiate proceedings, conduct raids, make arrests, and impose regulatory burdens, with or without genuine legal justification. Citizens who must do business with the regulatory state learn quickly that formal legal rights are no protection against administrative power exercised informally and without accountability. The payment of bribes, the cultivation of political connections, and the avoidance of regulatory scrutiny through non-compliance with registration requirements become rational responses to a regulatory system whose official power is vastly greater than its formal legitimacy.

A republican constitutionalism for India would need to focus explicitly on dismantling these structures of domination: through labour law reform that genuinely protects workers' rights, through land reform that genuinely redistributes power over land, through police reform that makes the exercise of police powers genuinely accountable, through bureaucratic reform that makes administrative action genuinely transparent and challengeable, and through judicial reform that makes courts genuinely accessible to those who need them most.

9.5 Deliberative Democracy and the Constitutional Process

Jurgen Habermas's theory of deliberative democracy, which grounds constitutional legitimacy in the quality of the deliberative processes through which constitutional norms are established and applied, provides a framework for evaluating both the original constitutional process and the ongoing constitutional practice. Habermas argues that legitimate law requires procedures that are

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open to all affected parties, that give each participant an equal voice, that are oriented toward reaching understanding rather than merely aggregating preferences, and that are free from distortion by power asymmetries that prevent genuine communicative rationality.

By these standards, the original Constituent Assembly process was imperfectly legitimate at best: dominated by one party, drawn from a restricted franchise, inaccessible to the illiterate majority of the population, operating in a language (English) that most Indians could not understand, and completing its work with extraordinary speed (two years and eleven months from first to last session, with many subjects receiving only limited debate) that made the kind of deep deliberative engagement that Habermas envisions structurally impossible. The subsequent constitutional practice, in which parliamentary debate has been progressively compressed, guillotine procedures used to pass legislation without debate, ordinances used to bypass Parliament entirely, and question hour effectiveness declined sharply, represents a further deterioration of deliberative quality.

The renewal of constitutional legitimacy that India needs requires not merely better constitutional content but better constitutional processes: more genuinely deliberative parliamentary procedure, more meaningful public consultation on significant legislation, more transparent regulatory decision-making, more effective mechanisms for citizen feedback on constitutional and legal change, and ultimately a constituent process that involves genuine popular deliberation rather than elite decision-making.

9.6 Postcolonial Jurisprudence and the Question of Indigenous Constitutional Vision

Postcolonial legal theory, associated in the Indian context with scholars like Upendra Baxi, Ranabir Samaddar, and Partha Chatterjee, asks what it would mean to develop a genuinely indigenous legal and constitutional tradition rather than merely adapting Western models to Indian conditions. This is a more radical question than is often appreciated. It is not merely a question of using Hindi terminology instead of English, or of drawing on ancient Indian legal texts as sources. It is a question of whether the fundamental assumptions of Western constitutionalism, its liberal individualism, its sharp public-private distinction, its adversarial litigation model, its preference for codification and textual precision, and its state-centric conception of governance, are adequate to the social realities and the legal needs of post-independence India.

Baxi's work on "suffering jurisprudence" argues that genuinely Indian constitutional jurisprudence must take as its starting point the suffering of India's most vulnerable populations rather than the abstract rights of the constitutional text, and must evaluate constitutional institutions and doctrines by their actual impact on that suffering rather than by their formal properties. This perspective challenges the dominant mode of constitutional scholarship, which tends to evaluate doctrines by their internal logical coherence, their conformity with precedent, and their consistency with constitutional text, rather than by whether they actually improve the lives of those who most need constitutional protection.

The Gandhian constitutional tradition, which emphasized village self-governance (gram swaraj), non-violent conflict resolution, and the transformation of social relationships through individual

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moral change rather than state coercion, represents an indigenous constitutional vision that was almost entirely excluded from the Constitution as actually drafted. Ambedkar's famous critique of Gandhi's village-based social vision, which he argued romanticized an institution that was in practice a bastion of caste oppression rather than community solidarity, remains powerful. But the critique need not lead to the wholesale rejection of participatory local governance as a constitutional value. Panchayati Raj, constitutionalized by the 73rd and 74th Amendments of 1992, represents an attempt to build local democratic self-governance into the constitutional framework, an attempt that has had mixed results depending on the specific state context and the degree of genuine political will to make local governance effective.

9.7 International Human Rights Law and its Constitutional Implications

India is a party to the major international human rights treaties, including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights. These treaties create international legal obligations that in principle inform the interpretation of constitutional rights through the incorporation principle that the Supreme Court has recognized in Vishakha and subsequent cases. The international human rights framework provides a set of standards against which India's constitutional practice can be measured, and on multiple dimensions that measurement reveals significant deficit.

The UN Human Rights Committee, which monitors compliance with the ICCPR, has repeatedly expressed concern about India's use of preventive detention, the UAPA's bail provisions, conditions in prisons, restrictions on internet access (particularly in Kashmir), the treatment of minorities, and the independence of the judiciary. The Committee on the Elimination of Racial Discrimination has raised concerns about caste discrimination and the effectiveness of India's legislative protections against it. The Special Rapporteurs of the Human Rights Council have repeatedly sought access to conduct country visits and have faced Indian government objection to their characterization of the human rights situation.

The constitutional implications of these international commitments are not as fully developed in Indian law as they could be. The Vishakha principle of interpretive incorporation is significant but limited in scope. The Supreme Court has not developed a systematic doctrine of constitutional conformity with international human rights obligations. And the government has sometimes resisted international scrutiny on the grounds that India's constitutional system is adequate to address the concerns raised, a response that is increasingly difficult to sustain in the face of the evidence.

A reformed constitutional framework that explicitly incorporated the ICCPR and ICESCR as constitutional benchmarks for rights interpretation, that established India's international human rights commitments as a constitutional minimum from which departing legislation would require compelling justification, and that created institutional mechanisms for monitoring compliance with those international commitments would represent a significant step toward genuinely rights-protective constitutionalism.

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CONCLUDING SYNTHESIS

THE PATH FORWARD: DIAGNOSIS, PRESCRIPTION, AND THE DEMOCRATIC IMPERATIVE

The analysis across the eight primary chapters and the extended theoretical chapter of Part Eighteen has produced a diagnosis of considerable severity. The Constitution of India, as originally designed and as subsequently applied, has generated structural outcomes that systematically undermine the democratic, secular, and rights-protective commitments of its Preamble and its fundamental provisions. The colonial inheritance, incompletely shed, continues to shape the administrative and legal culture in ways that privilege state authority over individual rights. The centralizing tendencies of the constitutional design, reinforced by seven decades of constitutional practice, have produced a federalism that is fictive in crucial respects. The institutional architecture, including the Governor's office, the emergency powers, the anti-defection law, and the money bill procedure, has been systematically exploited to concentrate power rather than distribute it. The rights provisions, though extensive, have been qualified, delayed, and selectively enforced in ways that leave the most vulnerable populations without effective constitutional protection.

The political consequences of these structural failures have been serious. The constitutional system has facilitated the rise of an increasingly nationalist and majoritarian politics that uses constitutional forms while eroding constitutional substance. The judiciary, while at its best a powerful force for rights protection, has at its worst provided constitutional legitimation for executive overreach. The legislature, neutered by anti-defection provisions, money bill manipulations, and curtailed debate, no longer performs the accountability function that parliamentary democracy requires. The media, subject to legal harassment, economic pressure, and ownership concentration, no longer consistently performs the watchdog function that democratic governance requires. Civil society, targeted by FCRA restrictions, UAPA charges, and regulatory pressure, operates under conditions of increasing constraint.

The prescription follows from the diagnosis. India needs a constitutional reform process that is as bold as the founding moment was in 1950, that draws on the accumulated experience of seven decades of constitutional democracy, that is genuinely inclusive of all sections of Indian society, and that produces constitutional arrangements capable of sustaining genuine democracy, genuine federalism, genuine rights protection, and genuine accountability into the twenty-first century and beyond.

This is a large task. It is a necessary task. And it is, ultimately, a democratic task: one that belongs not to constitutional scholars, not to parliamentary majorities, not to judicial collegia, but to the people of India themselves, who have inherited a constitutional promise that has been only partially fulfilled and who have both the right and the responsibility to demand its fuller realization.

The great philosopher of constitutional democracy, John Rawls, argued in his final major work, The Law of Peoples, that a just political society is one in which basic institutions meet the test of what he called public reason: they must be justifiable to all citizens in terms that all citizens can

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accept, regardless of their particular conception of the good. The constitutional order of India, in its current state, fails this test. Too many citizens experience it not as a framework for their flourishing but as an instrument of their subjugation. Too many constitutional promises are honored only in their breach. Too many constitutional institutions serve the few rather than the many.

The demand for a constitutional reckoning is not a demand for revolution. It is a demand for realization, the realization of the constitutional promise that was made to the Indian people in 1950 and has been so imperfectly kept in the decades since. That demand is legitimate. It is urgent. And it deserves the sustained intellectual engagement that this series of commentaries, through its eighteen parts and counting, has attempted to provide.

Part Nineteen will examine the specific constitutional reform proposals advanced by major political parties, constitutional commissions, and civil society organizations, subjecting them to the analytical framework developed in this and earlier parts, assessing their adequacy, and advancing a comprehensive reformist agenda that addresses the structural failures documented across this series.

END OF PART EIGHTEEN

PART NINETEEN: THE REFORM AGENDA IN DETAIL

Proposals, Precedents, Political Economy, and the Architecture of a Just Constitutional Order

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PREFACE TO PART NINETEEN

Part Eighteen concluded with a synthesis. It assembled the diagnostic framework that the eighteen preceding parts had collectively constructed, surveying colonial inheritance, structural centralization, federal fiction, the weaponization of rights law, the degradation of free expression, the victimization of India's poorest and most marginalized populations, and the constitutional dimensions of a foreign policy culture that has converted every neighbor into either a satellite or an adversary. The diagnosis was not hopeful. It was, however, honest. And honest diagnosis, however uncomfortable, is the indispensable precondition of genuine reform.

Part Nineteen is where the work of prescription begins in earnest. This is not to say that earlier parts have been silent on what must change. Every chapter has gestured toward the reforms that its analysis implies. But gestural prescription is insufficient. The Indian constitutional predicament is too serious, the stakes too high, and the complexity too great to be addressed through a list of talking points or a manifesto of grievances. What is needed is a sustained,

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technically rigorous, philosophically grounded, and historically informed engagement with the question of what a genuinely reformed Indian constitutional order would look like, how it might be achieved, and what the obstacles to its achievement are and how they might be overcome.

This part is organized into chapters that correspond to the major domains of constitutional dysfunction identified in earlier parts: the reform of political and electoral institutions, the reform of security law and the criminal justice apparatus, the reform of fiscal and genuine federalism, the reform of constitutional rights enforcement, the reform of the judiciary, the reform of the constitutional framework governing media and information, the reform of the state's relationship with tribal and minority communities, the construction of genuinely democratic foreign policy accountability, and, as the culminating chapter, the question of whether reform within the existing constitutional framework is sufficient or whether the times demand a genuinely new constituent process and a new constitutional beginning.

Throughout, this part draws on the rapidly expanding literature of comparative constitutional design, on the experiences of constitutional transformation in South Africa, Germany, Kenya, Bolivia, Iceland, and elsewhere, on the insights of contemporary constitutional theorists from Ran Hirschl to Rosalind Dixon to Tom Ginsburg to Tarunabh Khaitan, and on the rich tradition of Indian constitutional scholarship from Upendra Baxi to Rajeev Bhargava to Gautam Bhatia. It also draws on the latest constitutional developments in India itself, including the 129th Amendment Bill of 2024 on simultaneous elections, the 130th Amendment Bill of 2025 on ministerial removal upon detention, the continuing judicial challenges to the UAPA, the international human rights bodies' mounting assessments of India's democratic deterioration, and the scholarly conversations that have been energized by all of these developments.

The goal of this part is not to produce a draft constitution. It is to produce the intellectual framework within which a serious process of constitutional reform or reconstruction might be designed, argued for, and defended. The drafting must ultimately be done by the people of India through a process that is genuinely theirs. But the intellectual preparation for that drafting is the contribution that scholarship can make, and it is the contribution that this part attempts.

CHAPTER ONE

THE REFORM OF POLITICAL AND ELECTORAL INSTITUTIONS: FROM COLONIAL INHERITANCE TO DEMOCRATIC ARCHITECTURE

1.1 The First-Past-the-Post System and the Manufactured Majority Problem

The electoral system through which a democracy translates popular preferences into governmental power is not a technicality. It is a constitutional choice of the most fundamental kind, because it determines whose preferences matter, how much they matter, and what kind of political majorities are permitted to exercise the enormous powers that a constitution vests in the government. The choice of electoral system shapes the party system, which shapes the quality of parliamentary representation, which shapes the quality of legislation, which shapes the quality of

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governance, which shapes the quality of citizens' lives. Electoral design is constitutional design in the most direct and consequential sense.

India uses the first-past-the-post system (FPTP), inherited from Britain, in which each parliamentary and assembly constituency elects a single member and the member elected is the candidate who receives more votes than any other candidate, regardless of whether those votes constitute a majority of votes cast. The consequences of this system in a country with dozens of competitive political parties are well documented in the literature of electoral studies. In the 2019 general election, the Bharatiya Janata Party won 303 seats in the Lok Sabha, a comfortable parliamentary majority, with approximately 37.4 percent of votes cast nationally. In the 2024 general election, the BJP won 240 seats, sufficient with coalition partners to form a government, with approximately 36.6 percent of the national vote. These numbers mean that in both elections, roughly two-thirds of Indian voters voted for parties other than the BJP, but that fact was translated by the FPTP system into a BJP-led government with a comfortable working majority.

This is not a partisan observation. Every party that has dominated Indian politics has benefited from this distortion at some point. In 1984, the Congress won 404 seats out of 543 with approximately 49 percent of the national vote, an extraordinary amplification of majority preference into near-total parliamentary dominance. In 1971, Congress under Indira Gandhi won 352 seats with 44 percent of the vote. The FPTP system consistently over-rewards geographically concentrated electoral pluralities and under-rewards parties whose support is geographically dispersed. Regional parties with concentrated geographical support can win substantial seat shares; national parties with minority but geographically distributed support can win commanding majorities.

The comparative constitutional literature on electoral systems offers a rich range of alternatives. Proportional representation (PR) in its various forms, including party list systems, mixed-member proportional systems (as used in Germany and New Zealand), and single transferable vote systems (as used in Ireland and Northern Ireland), all produce more proportionate translations of votes into seats. Germany's mixed-member proportional system, which combines constituency-based first-past-the-post elections with a party-list correction that ensures the overall seat distribution mirrors the party vote share, is widely regarded as the most successful large-scale democracy's electoral design. It prevents manufactured super-majorities, forces governments to build genuine coalitions, and ensures that the Bundestag composition reflects the actual distribution of voter preferences.

The argument against adopting proportional representation in India is the argument from stability. PR systems, it is argued, produce fragmented legislatures and unstable coalition governments. Italy's experience with pure proportional representation under the pre-1993 electoral system, which produced numerous short-lived governments, is frequently cited. Israel's PR system, which has produced extreme governmental instability and given disproportionate bargaining power to small religious parties, is another frequently cited example.

But this argument is not as strong as it appears. Germany has used mixed-member proportional representation since 1949 with a record of governmental stability that compares favorably with any other major democracy. The stability of German governments is not achieved by electoral

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manipulation of seat distributions but by the constitutional requirement of a constructive vote of no confidence: under Article 67 of the German Basic Law, the Bundestag can remove a Chancellor only by electing a successor simultaneously. This mechanism prevents the kind of opportunistic no-confidence votes that can destabilize parliamentary governments without replacing them with stable alternatives. India's adaptation of a similar constructive vote mechanism, combined with a mixed-member proportional electoral system, would address both the distortion problem and the stability concern.

The reform of India's electoral system requires constitutional amendment, specifically of the provisions in Part XV of the Constitution dealing with elections. But the foundational principle, that the electoral system must translate votes into seats with a reasonable degree of proportionality, is itself a constitutional principle derivable from the right to equality under Article 14 and the fundamental guarantee of free and fair elections that the Supreme Court has recognized as part of the basic structure in Kesavananda Bharati. A system that systematically translates minority vote shares into parliamentary supermajorities is difficult to reconcile with the principle of equal political citizenship that a democratic constitution must guarantee.

The reform agenda on electoral systems must therefore include a serious and sustained constitutional debate about moving from FPTP to some form of mixed or proportional representation at the national and state legislative levels. This debate should draw on the extensive comparative experience documented in the electoral studies literature, including the experiences of countries that have made the transition from FPTP to mixed systems, including New Zealand in 1996, Scotland in 1999, and Wales in 1999. It should also engage seriously with the particular conditions of Indian democracy, including the size and diversity of the country, the existing strength of regional parties, and the concerns about governmental stability.

1.2 The One Nation One Election Proposal: Constitutional Analysis of a Dangerous Reform

The 129th Constitutional Amendment Bill of 2024, which proposes to synchronize all elections to the Lok Sabha and all state legislative assemblies so that they are held simultaneously, represents one of the most constitutionally significant legislative proposals of the post-liberalization era. The Bill proposes simultaneous elections as a response to concerns about the expense and disruption caused by frequent elections and the regular imposition of the Model Code of Conduct, which the government argues halts developmental activities and disrupts service delivery. PRSIndia These concerns have surface plausibility. But the constitutional analysis of the proposal reveals it to be, on the most rigorous examination, not a reform of Indian democracy but a restructuring of Indian democracy in ways that concentrate power, undermine federalism, and reduce rather than enhance democratic accountability.

The first and most fundamental constitutional objection to One Nation One Election (ONOE) concerns the federal character of the Indian Union. Since Article 1 of the Constitution declares India a "Union of States," forcing state electoral cycles to align with the Union treats states as administrative vassals rather than constitutional entities with sovereign spheres of legislation under List II of the Seventh Schedule. The Wire The Supreme Court has repeatedly recognized federalism as a component of the basic structure of the Constitution. In S.R. Bommai v. Union of India, the Court held that states possess independent constitutional existence, that they are not

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merely agents of the Centre, and that this independent existence requires that they be governed by legislatures that derive their mandate from the state's own electoral processes and are accountable to the state's electorate on the state's own issues.

The NITI Aayog report on simultaneous elections cites an IDFC Institute study showing a 77 percent probability of a voter choosing the same party for the state and Union when elections are held simultaneously. The Wire This finding, which the proponents of ONOE do not adequately engage with, represents in practice a dramatic centralization of the electoral outcome across all levels of government. When national issues dominate because national and state elections are held together, state-specific concerns about agriculture, water, irrigation, language, caste justice, and local governance are crowded out by national narratives about security, cultural identity, and the personal image of the national leader. The "double engine" effectively becomes the only engine, with the national narrative drowning out regional narratives. The Wire

The second constitutional objection concerns the democratic accountability that the ability to hold no-confidence motions and mid-term elections provides. The most controversial element of the ONOE proposal is the concept of mid-term elections for residual mandates: the Constitution does not recognize the concept of a "residual mandate," and the proposed system effectively preserves earlier electoral cycles while nominally claiming each new assembly is not a continuation of the old. NEXT IAS The practical effect of this system is that an elected state government that falls through a no-confidence vote, or that is unable to maintain the confidence of its assembly for other reasons, will be replaced not by a fresh election for a full term but either by another government of the same assembly or, in the worst case, by President's Rule, both outcomes that reduce rather than enhance democratic accountability.

The proposed Article currently lacks specificity regarding the basis of the Election Commission of India's opinions and under what circumstances it can advise the President to postpone elections. This ambiguity opens the door to subjective interpretations and potential bias and abuse. Given that the ECI's composition is determined by an executive-dominated committee including the Prime Minister, a Cabinet Minister, and the Leader of the Opposition, there is heightened risk of partisan influence. JuWissBlog

The third constitutional objection concerns the relationship between ONOE and local self-government. The HLC report recommends amending Article 324A to force municipalities and panchayats to align their elections with the Lok Sabha within 100 days. This could spell the death knell of the 73rd and 74th Amendments, both enacted in 1992 to strengthen local self-governance in rural and urban areas. By tethering the vote for a village pradhan to that of members of Parliament including the Prime Minister, the proposal ensures the nationalization of the neighborhood. The Wire The village election, instead of being about the village water supply or the primary school, would be fought on national issues like Article 370 or the Ram Mandir.

The comparative evidence does not support the efficiency argument for ONOE. In June 2025, Indonesia's Constitutional Court ruled that national and local elections must be separated from 2029 onwards, spaced about two to two-and-a-half years apart, having found that simultaneous elections created administrative overload, voter fatigue, and reduced quality of democratic participation. NEXT IAS Germany's political stability, often cited in favor of synchronized

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elections, actually derives not from electoral synchronization but from the constructive vote of no confidence mechanism and from the proportional representation system that produces governments with genuine majority support. Elections in German Lander (states) are deliberately staggered, and stability comes from the constructive vote of no confidence, which requires the Bundestag to elect a successor before removing a Chancellor. NEXT IAS

The concept of ONOE, in its present form, is inconsistent with essential constitutional values like democracy and federalism and should not be proceeded with. The problems arising out of the enormous scale and frequency of elections can be addressed through less constitutionally damaging measures. Vidhi Centre for Legal Policy These less damaging measures include the regulation of election expenditure and campaign finance through strengthened legal frameworks, the delimitation of the role of government machinery in campaign activities, stricter enforcement of the Model Code of Conduct, and the development of administrative capacity so that the temporary imposition of the Code does not genuinely disrupt governance.

From a jurisprudential perspective, the ONOE proposal illustrates what Tarunabh Khaitan has called "constitutional-cuts": incremental but cumulative constitutional changes that, viewed in isolation, seem like administrative or procedural adjustments but that, taken together, alter the fundamental character of the constitutional order. Khaitan's constitutional-cuts concept is directly applicable: ONOE is proposed as a reform of electoral efficiency, but its actual constitutional effect is to homogenize the political landscape, strengthen the center against the states, reduce the accountability of state governments to their own electorates, and concentrate political power in the hands of whichever force dominates the single synchronized national election. JuWissBlog

The constitutional reform agenda on electoral institutions must therefore reject ONOE as proposed and instead pursue reforms that genuinely democratize the electoral process without sacrificing federalism. These reforms include strengthening the independence of the Election Commission (which requires a constitutional amendment to ensure appointment through a genuinely bipartisan or independent process, reversing the executive-dominated appointment mechanism restored by the Chief Election Commissioner and Other Election Commissioners Act of 2023 after the Supreme Court had required a more independent procedure in Anoop Baranwal v. Union of India in 2023), reforming electoral finance through mandatory disclosure and expenditure limits, reforming the criminal antecedent problem in electoral candidacies, and introducing proportionality into the electoral system.

1.3 Political Party Reform: The Constitutional Regulation of Internal Democracy and Finance

As noted in earlier parts, the Indian Constitution is almost entirely silent on political parties. They are not defined. They are not required to demonstrate internal democracy. They are not required to account publicly for their sources of income. They are not required to hold internal elections to any particular standard. They are, in constitutional terms, private organizations that happen to perform the central function of nominating candidates and forming governments in a democratic republic.

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This silence has allowed Indian political parties to become, with few exceptions, either family dynastic enterprises or authoritarian personal vehicles for individual leaders. The Congress party's identification with the Nehru-Gandhi family, which extends across multiple generations, has been criticized even by senior Congress leaders as a barrier to genuine internal democracy. Regional parties from the Samajwadi Party to the Telugu Desam Party to the Dravida Munnetra Kazhagam are controlled by families. The BJP, which identifies itself as an organization with more structured internal processes through the RSS and the party's own nomination procedures, has nonetheless seen the personal authority of Narendra Modi and Amit Shah become effectively unchallenged within the organization.

The consequences of party organizational culture for democratic quality are direct and well-documented. When party leaders can arbitrarily distribute tickets (nominations) to candidates for legislative seats, they can demand loyalty from legislators in ways that convert parliamentary representation from a process of popular delegation into a process of patron-client management. The candidate who gets a ticket owes a debt to the leader who gave it, a debt that is paid in legislative compliance rather than in genuine representation of the constituency's interests. The voter, who formally elects the candidate, effectively has no say in who the candidate is because the candidate selection process is entirely internal to the party and entirely controlled by the party leadership.

The comparative constitutional experience on party regulation is instructive. Germany's Basic Law requires political parties to conform to democratic principles in their internal organization under Article 21. The German Federal Constitutional Court has interpreted this requirement as obligating parties to hold genuine internal elections for leadership positions, to maintain internal deliberative processes, and to allow party members meaningful participation in the party's decisions. The enforcement mechanism for this requirement is not state supervision of party internal affairs but judicial review available to dissatisfied party members.

A constitutional reform of Indian political parties would at minimum require: first, a constitutional provision (comparable to Article 21 of the German Basic Law) requiring all political parties contesting elections to organize themselves democratically and to provide for regular internal elections supervised by an independent authority; second, a constitutional or statutory framework requiring complete transparency in party finance, including the mandatory disclosure of all donations above a minimal threshold, the identification of all major donors, and the public filing of audited accounts; third, a constitutional framework limiting the concentration of party ownership and leadership in families or individuals across generations; and fourth, a reformed anti-defection law that distinguishes between opportunistic defections motivated by private gain and genuine conscientious disagreements that elected representatives should be free to act upon.

On party finance, the Supreme Court's landmark judgment in Association for Democratic Reforms v. Union of India of February 2024, which struck down the electoral bonds scheme as unconstitutional, is a critical starting point. The Court held that the scheme violated voters' right to information under Article 19(1)(a) because it allowed large anonymous donations to political parties, particularly to ruling parties with whom donors had business interests regulated by government, in ways that enabled systematic corruption between corporate money and

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governmental power. India's Constitution is one of the most amended national constitutions in the world, amended roughly twice a year, which reflects in part the use of constitutional amendment as a tool of political management rather than of genuine constitutional development. Wikipedia Building genuine constitutional protections for electoral finance transparency into the amendment-proof structure of the Constitution, rather than leaving it to ordinary legislation that can be modified by parliamentary majorities, is essential.

The 130th Amendment Bill of 2025, which proposes that Prime Ministers, Chief Ministers, and Ministers be removed from office automatically if arrested and detained for thirty consecutive days for a serious criminal offence, represents a quite different kind of political reform proposal. The Bills propose that the Prime Minister or a Chief Minister be removed from office automatically if arrested and detained for 30 consecutive days. By triggering removal solely based on arrest and detention, the Bills effectively grant the power to unseat the Prime Minister or a Chief Minister to the permanent executive or investigative agencies, which may weaken separation of powers, disrupt the chain of democratic accountability, and enable the bureaucracy or investigative agencies to influence the tenure of elected governments. PRSIndia

This analysis by constitutional scholars is correct and the observation is important. The 130th Amendment, whatever its intentions in terms of ensuring that ministers facing serious criminal charges do not continue to exercise governmental power, creates a constitutional mechanism that could be weaponized by investigative agencies acting under political direction. In a country where the CBI has been described by the Supreme Court as a "caged parrot" and where the ED (Enforcement Directorate) has been systematically deployed against opposition politicians, creating an automatic removal mechanism triggered by arrest provides the ruling government with a constitutionally sanctioned tool for removing elected leaders of opposing parties through the simple mechanism of causing their arrest.

The correct constitutional approach to the problem of criminality in politics is a different one: the strengthening of conviction-based disqualification provisions that are swift, independent, and subject to judicial oversight; the strengthening of corruption investigation mechanisms through genuinely independent anti-corruption agencies whose functioning is insulated from political interference; and the creation of fast-track courts for cases involving elected representatives that ensure swift trials rather than the decades-long delays that currently allow politicians to remain in office while facing criminal charges that never reach conclusion.

1.4 The Anti-Defection Law and the Problem of Legislative Sovereignty

The Tenth Schedule of the Constitution, added by the Fifty-Second Amendment in 1985, created India's anti-defection law. Its purpose was to address a genuine democratic problem: the phenomenon of legislative floor-crossing, in which elected legislators voted against their party and for rivals, in exchange for positions, contracts, money, or other benefits. This phenomenon, known derisively as "aaya ram, gaya ram" after a Haryana legislator who switched parties multiple times in a single day in 1967, had become a serious destabilizing force in Indian democracy by the 1980s, undermining governmental stability and making a mockery of electoral mandates.

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The solution adopted by the Tenth Schedule was to make legislative independence itself constitutionally impermissible. A legislator who votes against her or his party's direction, or who abstains from a vote in defiance of the party whip, is subject to disqualification from the legislature under the Tenth Schedule. The determination of whether a disqualification applies is made, at least at first instance, by the Speaker of the legislature, a functionary who is elected by the majority party and who has demonstrated, in numerous documented instances, a systematic bias toward interpreting the Tenth Schedule in ways that favor the majority party that controls their position.

The constitutional problems with the Tenth Schedule are multiple and serious. The most immediate is the problem of the Speaker's jurisdiction. The Supreme Court has, after decades of hedging, confirmed in Subhash Desai v. Principal Secretary of Maharashtra in 2023 and in subsequent cases that Speakers who belong to a party faction cannot fairly adjudicate defection cases involving that faction, and that the Court can intervene when the Speaker's inaction or delay is itself being used as a political tool. But the fundamental problem of the Speaker's interest in the outcome of defection proceedings, which is structural rather than contingent, has not been resolved by these judgments.

The deeper constitutional problem is the nature of representation itself. Parliamentary democracy rests on the principle that elected representatives represent their constituencies and their constituents, not merely their parties. The Westminster model, from which India derives its parliamentary structure, has historically permitted legislators considerable freedom of conscience: the ability to vote against their party line on matters of principle, to abstain on matters where party interest conflicts with constituency interest, and to cross the floor permanently when their political convictions change. This freedom is not merely a convention. It is the constitutional expression of the principle that legislative sovereignty is located in the legislature as a whole, and that each member of the legislature exercises a share of that sovereignty as the representative of her or his constituency and not merely as the agent of a party organization.

The Tenth Schedule of the Indian Constitution effectively converts this constitutional principle of representative independence into its constitutional opposite: a guarantee of party control over individual legislators. The legislators' constitutional duty of representation is subordinated to the party's organizational authority over voting behavior. The practical result is a Parliament and state legislatures in which the Chief Whip of the majority party can guarantee that every vote proceeds as the party leadership directs, because any defiance is constitutionally punishable by the loss of the legislative seat.

This is not democracy in any meaningful sense of the word. It is a system of managed voting in which the formal apparatus of parliamentary democracy, the debates, the questions, the committee hearings, the ritual of parliamentary procedure, provides a legitimating facade for decisions that are actually made in the party leadership's offices before the Parliament assembles. The constitutional reform of the Tenth Schedule must distinguish more carefully between the opportunistic defections that the Schedule was designed to prevent, defections motivated by personal gain and destabilizing to democratic government, and the legitimate exercise of legislative independence on matters of conscience, policy disagreement, and constituency

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interest. A reformed anti-defection framework should retain the prohibition on defection to another party accompanied by material benefit but should explicitly protect the right of legislators to vote according to their conscience on matters designated as conscience votes, to abstain on matters where the party whip conflicts with clearly expressed constituency preferences, and to criticize government policy publicly without triggering disqualification.

CHAPTER TWO

SECURITY LAW, THE CRIMINAL JUSTICE APPARATUS, AND THE CONSTITUTION OF FEAR

2.1 The UAPA and the Constitutional Architecture of Perpetual Detention

The Unlawful Activities (Prevention) Act of 1967, as amended in 2004, 2008, 2013, and 2019, represents the single most important instrument of what this textbook has called the constitution of fear: the set of legal and quasi-constitutional arrangements through which the Indian state has maintained the capacity to incapacitate political dissent through processes that are formally legal but substantively incompatible with the constitutional guarantees of liberty, equality, and free expression.

The UAPA's constitutional significance begins with its genealogy. The Act can be traced to the Criminal Law Amendment Act of 1908, which defined "unlawful associations" for the first time and gave the state the power to curtail any form of expression that dissented against the Crown. Upon independence, the Indian government decided to retain the statute. In 1967, after the wars with Pakistan and China, the UAPA was enacted to give the state wide-reaching powers to notify unlawful associations along with penalizing individuals for partaking in unlawful activities. Law and Other Things The colonial genealogy is not incidental. The UAPA's intellectual and structural foundations are in the colonial project of managing a subject population whose political activities are presumed to be threatening until proven otherwise, rather than in the democratic project of protecting citizens whose right to political expression is presumed to be legitimate until proven otherwise.

The UAPA's constitutional problems are structural, pervasive, and well-documented. The most fundamental is the bail jurisprudence created by Section 43D(5). Section 43D(5) requires denial of bail if accusations appear "prima facie true" without defining that standard. In 2019, Watali narrowed the scope of bail scrutiny by directing courts to presume the prosecution's case at face value. However, in 2021, K.A. Najeeb recognized that constitutional courts may still grant bail when prolonged trials make continued custody disproportionate to the maximum sentence prescribed for the alleged offence. Oxford Human Rights Hub

This bail standard represents a fundamental inversion of the constitutional presumption of innocence. Article 21 of the Constitution, as interpreted through the Maneka Gandhi line of cases, requires that any deprivation of personal liberty must be through a procedure that is fair, just, and reasonable. A procedure that denies bail on the basis that accusations "appear prima

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facie true," without defining that standard and without requiring the court to meaningfully evaluate the evidence, is not fair, just, or reasonable by any constitutional standard. It is a procedure that effectively converts the police chargesheet into a warrant of imprisonment, removing the court from any meaningful role in protecting liberty against executive power.

The continuing detention of Umar Khalid, who has been in custody since September 2020, whose trial had not begun as of September 2025, and who faced charges for alleged participation in an "intellectual conspiracy" behind the Delhi riots even though he was not in Delhi when the riots took place, represents the constitutional failure of the UAPA bail standard in its most concrete human form. Oxford Human Rights Hub Khalid's case is not unique or exceptional. It is representative of a pattern of UAPA detention in which individuals associated with political activism, journalistic investigation, academic research, and civil society advocacy have been held in pre-trial custody for years, sometimes decades, on charges that are ultimately not sustained by evidence but that are substantiated sufficiently to deny bail under the UAPA's permissive standard.

The UAPA has a conviction rate of approximately 2 percent, meaning that 97.5 percent of people arrested under the Act between 2016 and 2020 remained in prison awaiting trial without conviction. The BJP government recorded 73 of 154 documented UAPA cases in 2010 to 2020 being issued in BJP-ruling states. Wikipedia This statistical picture illuminates the constitutional reality of UAPA: it functions not as an instrument of criminal justice, in which accusations are investigated, charges are framed, evidence is presented, and guilt is established before punishment is imposed, but as an instrument of political management, in which the filing of UAPA charges is itself the punishment, since detention for years before trial constitutes the effective sentence regardless of whether conviction ever follows.

Unlike sedition, UAPA operates within a national security narrative, making judicial scrutiny more deferential. As a result, constitutional protections are weakened not by outright repeal, but by legal substitution. The label changes from sedition to terrorism, but the effect on civil liberties remains severe. Universal Group Of Institutions The enactment of the Bharatiya Nyaya Sanhita (BNS) of 2024, which replaced the Indian Penal Code and the Code of Criminal Procedure with revised instruments, has been critiqued as substituting one colonial apparatus with another that carries similar powers but different names. Section 152 of the BNS has been challenged as sedition in disguise, drafted in even broader and vaguer terms, continuing to criminalize acts endangering the "sovereignty, unity, and integrity of India" without clear thresholds. Universal Group Of Institutions

The constitutional reform of security law requires several simultaneous interventions. The first is the judicial challenge currently before the Supreme Court in Sajal Awasthi v. Union of India and related matters, which challenge the constitutionality of UAPA's bail provisions and of the 2019 amendments allowing individual designation as a "terrorist" without trial. Whether the power to categorize someone as a terrorist without a trial and without any judicial application of mind goes against the settled canons of criminal jurisprudence is a central question before the Court. Supreme Court Observer This judicial challenge must be pursued rigorously and must be decided on the merits, resisting the temptation of the Court to manage rather than resolve the constitutional question.

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The second intervention is legislative amendment of the UAPA's bail provision to restore the ordinary bail standard under Section 437 of the Code of Criminal Procedure (now Bharatiya Nagarik Suraksha Sanhita), under which the accused is entitled to bail unless the court is satisfied that there are specific reasons, beyond the mere existence of charges, why release would create substantial risk. The UAPA's special bail standard is not necessary for the prevention of terrorism, as demonstrated by the fact that countries with far stronger anti-terrorism records than India manage terrorism prosecutions without similar bail restrictions.

The third intervention is the constitutional entrenchment of a right to speedy trial that is more than merely aspirational. The right to a speedy trial under Article 21, recognized by the Supreme Court in Hussainara Khatoon v. Home Secretary, State of Bihar in 1979, has not been given effective institutional expression. The statutory right to speedy trial that the Supreme Court directed Parliament to enact in Hussainara Khatoon was never created. Courts continue to accept institutional delay as a reason to deny bail rather than as a reason to demand expedited trial. The constitutional reform agenda must include a statutory entitlement to trial within specified time limits in all criminal cases, including security cases, with automatic bail entitlement if those limits are exceeded.

2.2 The Police and the Constitution: From Colonial Instrument to Democratic Service

The Indian Police Act of 1861, drafted in the aftermath of the 1857 uprising with the explicit purpose of creating a police force loyal to the colonial state and capable of suppressing political dissent, remains the governing legislation for the majority of India's state police forces, though it has been supplemented and partially replaced by state police acts in several states. The fundamental architecture of the 1861 Act, a centralized, hierarchically organized force under the command of civil servants answerable to the state government rather than to independent oversight bodies, has been preserved in most Indian states despite repeated reform recommendations.

The National Police Commission, which submitted eight reports between 1979 and 1981, recommended comprehensive police reforms including the creation of State Security Commissions to prevent political interference in police functioning, the establishment of independent police complaints authorities, fixed tenures for senior police officials to prevent transfers being used as political punishment, and the separation of law and order functions from investigation functions. These recommendations were not implemented by any state government, despite the Supreme Court's direction in Prakash Singh v. Union of India in 2006 that states must implement the National Police Commission's recommendations.

The Supreme Court's Prakash Singh directions, which included specific requirements for State Security Commissions, fixed tenures, independent complaints mechanisms, and separation of functions, have been implemented nominally but not substantively by most states. States have created Security Commissions and complaints mechanisms that exist on paper but function largely as rubber stamps for the government of the day. The underlying problem, that the state police force is subject to the political control of the elected state government and through it of the ruling party, has not been altered by the formal compliance with the Prakash Singh directions.

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The constitutional dimension of police reform is foundational. The use of police forces as instruments of political repression, a constitutionally protected right under Article 21 against police violence, means that genuine police reform is not merely a question of administrative management but a constitutional imperative. The constitutional reform framework must include the entrenchment, at the constitutional level, of the principle that the police function is the protection of citizens' rights and the enforcement of law, not the implementation of the ruling party's political agenda.

This requires, at minimum, constitutional amendments that: establish constitutionally independent State Police Commissions with members appointed through a genuinely nonpartisan process, including representation from civil society and the legal profession, with the mandate of overseeing police functioning and handling complaints; create constitutional protection for police officers who follow the law rather than political direction, protecting them from transfers and removals motivated by their refusal to abuse their powers at the direction of political superiors; and establish constitutional entitlements for citizens subjected to police detention, including the right to legal representation from the moment of arrest, the right to communicate with family members, the right to be informed of the grounds for arrest in a language they understand, and the right to habeas corpus at all times without limitation.

2.3 The Prison System and the Constitution: Mass Incarceration as Governance

The prison system is the most invisible and most brutal expression of the constitutional order's relationship to its most vulnerable citizens. India's prisons hold significantly more people than their official capacity permits. As of the latest available National Crime Records Bureau data, India's prisons have an official capacity of approximately 573,000 persons but hold over 554,000, of which approximately 75 percent are undertrials, persons who have not been convicted of any offence but who are awaiting trial. This 75 percent undertrial proportion is the highest among major democracies and represents a fundamental constitutional failure: three-quarters of India's imprisoned population is there not because of conviction but because of poverty. The inability to afford bail, not guilt, is the primary determinant of who is imprisoned in India.

The constitutional dimension of this reality is acute. Article 21's guarantee of the right to life and personal liberty, interpreted by the Supreme Court to require that deprivation of liberty be through a procedure that is fair, just, and reasonable, is systematically violated by a system in which liberty is effectively for sale. The person who can afford to pay a lawyer to apply for bail, who has a permanent address and stable employment that satisfies the court's criteria for bail conditions, and who has the social connections to provide sureties, is released. The person who cannot afford any of these things remains imprisoned regardless of the severity or credibility of the charges against them.

The constitutional reform agenda must address the bail system as a fundamental rights issue. The right to bail in cases not involving flight risk or danger to others should be constitutionally entrenched as a dimension of the right to liberty. The concept of personal bond (PR bond or personal recognizance) as an alternative to monetary bail should be constitutionally mandated as the default in all but the most serious cases. Legal aid of genuine quality, not merely nominal

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representation by an overwhelmed duty solicitor, should be a constitutional entitlement enforceable in every district of the country.

The treatment of prisoners, which the Supreme Court has held falls within the protections of Article 21 in its extended interpretations, is a separate constitutional dimension. The conditions in the majority of Indian prisons, which the National Human Rights Commission has repeatedly documented as involving severe overcrowding, inadequate sanitation, insufficient food and water, denial of medical care, and systematic violence including custodial torture and deaths, represent a systemic violation of constitutional rights that the state has been unable or unwilling to remedy. Custodial deaths, which occur with grim regularity in Indian police stations and prisons, represent the most extreme form of this constitutional failure. The constitutional entrenchment of a prohibition on custodial torture, enforceable through independent investigation and mandatory prosecution of responsible officials, is a minimum constitutional reform requirement.

CHAPTER THREE

FISCAL FEDERALISM AND THE RECONSTRUCTION OF GENUINE AUTONOMY

3.1 The Finance Commission, Tax Devolution, and the Poverty of State Autonomy

The fiscal relationship between the Union and the states is the material foundation on which the entire edifice of Indian federalism rests, and it is a foundation that is structurally inadequate for the weight placed upon it. The constitutional framework for fiscal federalism, established in Articles 268 to 281 and the Seventh Schedule, assigns the most productive revenue sources to the Union while assigning the most resource-intensive expenditure obligations to the states. The result is a vertical fiscal imbalance of fundamental proportions: the states have constitutional responsibility for the most important aspects of citizens' daily lives (health, education, police, local government, agriculture, water) while lacking the constitutional authority to raise the revenues required to discharge those responsibilities.

The Finance Commission, a constitutional body established under Article 280 and reconstituted every five years, is tasked with recommending the distribution of central taxes between the Union and the states and the principles governing grants-in-aid to needy states. The Finance Commission's recommendations are formally advisory rather than binding on the Union government, though they are in practice usually accepted with modifications. The 15th Finance Commission, which submitted its report for the period 2021-26, recommended that states receive 41 percent of the divisible pool of central taxes (a reduction from the 14th Finance Commission's recommendation of 42 percent, primarily due to the conversion of Jammu and Kashmir from a state to Union Territories).

The 41 percent devolution figure, while higher than historical norms, is insufficient to give states genuine fiscal autonomy. States receive a share of central taxes, but the composition of the divisible pool, the mix of taxes that are shared with states, has changed significantly since the

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Goods and Services Tax (GST) replaced the previous system of central and state sales taxes in 2017. The GST is a landmark reform in many respects, creating a common market for goods and services across the country and eliminating the multiple cascading taxes of the previous regime. But its constitutional implications for federalism are ambiguous at best.

Under the GST, both the Union and the states levy GST jointly through the mechanism of the GST Council, a constitutional body established under Article 279A by the 101st Constitutional Amendment. The GST Council, in which the Union has a one-third voting share and states collectively have a two-thirds voting share (with decisions requiring a three-quarters supermajority), appeared on paper to create a cooperative federal fiscal institution. But in practice, the Union government has used its agenda-setting power in the Council and its relationship with individual state governments to shape GST rate-setting in ways that have not always served state fiscal interests.

More fundamentally, the introduction of GST has reduced states' fiscal autonomy below even the pre-GST level in one critical respect: states no longer have the constitutional power to set their own rates for the most important commodity taxes. The VAT system that preceded GST, while inefficient, gave states the constitutional ability to set their own rates for sales taxes on commodities within their territory. Under the GST, this flexibility has been replaced by the uniformity of a centrally negotiated tax structure. States that want to incentivize particular industries, or to exempt particular commodities that are important to their poor population from taxation, or to differentiate their tax environment from neighboring states to attract investment, now face the constraint that the GST structure, set by the GST Council, limits their room for fiscal differentiation.

The constitutional reform of fiscal federalism must address these structural problems at their root. The minimum reforms required include: first, a constitutionally mandated and binding (rather than advisory) Finance Commission, whose recommendations on tax devolution and grants are automatically implemented without requiring executive approval; second, a constitutional floor for states' share of the divisible pool that cannot be reduced below a specified percentage regardless of changes in government at the Centre; third, constitutional recognition of states' right to levy certain specified own-revenue taxes that cannot be subsumed into the GST or other centrally managed revenue streams; fourth, a constitutional requirement that centrally sponsored schemes, through which the Centre directs states' expenditure in areas of state jurisdiction, be subject to genuine inter-governmental agreement rather than unilateral imposition; and fifth, a constitutional framework for resolving disputes between the Centre and states over fiscal matters that is genuinely independent of both levels of government.

The constitutional reform of the GST itself, to restore a measure of states' fiscal autonomy within the common market framework, requires both constitutional amendment and political will. The political will is difficult because the Union government has a structural interest in maintaining the current GST framework, which concentrates fiscal decision-making in a Council in which the Union can effectively veto changes it opposes through procedural management even though it is formally outvoted. But the constitutional imperative is clear: a fiscal framework that reduces states to dependents on the Centre for the resources to discharge their own constitutional responsibilities is incompatible with genuine federalism.

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3.2 Planning, Development, and the Constitution: NITI Aayog and the Death of State Planning Autonomy

The Planning Commission, established in 1950 by an executive resolution of the Union government (it had no constitutional foundation), was for decades the central institution of Indian economic planning. It prepared five-year plans that allocated investment across sectors and states, determined the pattern of public expenditure, and in practice exercised enormous influence over economic policy. It was dominated by the Centre, headed by the Prime Minister, and its working relationship with states was more supervisory than collaborative.

In 2014, the Planning Commission was dissolved by the new BJP government and replaced by NITI Aayog (National Institution for Transforming India). NITI Aayog is a think tank rather than a planning body; it has no power to allocate funds, and the project of directive economic planning has been effectively abandoned in favor of market-driven development with targeted governmental interventions. These changes have both economic and constitutional dimensions.

The constitutional dimension of the NITI Aayog's replacement of the Planning Commission concerns the status of cooperative federalism in economic policy. The Planning Commission, whatever its central-government domination, had at least provided a formal forum in which state governments participated in discussions about national economic priorities and in which states made the case for investment in their territories. The NITI Aayog, as a Union government think tank without mandatory state participation, is a retreat from even this limited collaborative framework.

More significant constitutionally are the centrally sponsored schemes (CSS) through which the Union channels development expenditure into areas of state jurisdiction. There are over 300 centrally sponsored schemes covering areas from the Mahatma Gandhi National Rural Employment Guarantee Scheme to the Pradhan Mantri Awas Yojana housing scheme to the Ayushman Bharat health insurance scheme. These schemes are funded jointly by the Centre and states (in varying proportions), but their design, conditions, monitoring, and evaluation are entirely controlled by the relevant Union ministries.

The constitutional problem with the CSS architecture is that it allows the Centre to effectively govern in areas of state jurisdiction by controlling the resources that states need to provide public services. A state government that disagrees with the design of a CSS or that wants to modify it to suit its specific conditions faces the choice between accepting the CSS as designed (and receiving the central resources) or redesigning it (and losing the central resources). This is not a meaningful choice. It is a fiscal straitjacket that prevents state governments from exercising the genuine policy autonomy that the federal distribution of legislative powers is supposed to guarantee.

The constitutional reform required here is the establishment of a constitutional framework, comparable to the Inter-Governmental Relations Framework of the South African Constitution, that requires genuine collaborative design of all schemes operating in areas of state jurisdiction, that protects states' right to adapt national schemes to their specific conditions without financial penalty, and that creates enforceable constitutional obligations on the Centre to provide

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development resources to states without attaching conditions that override state legislative autonomy.

CHAPTER FOUR

THE RIGHTS REVOLUTION IN REVERSE: CONSTITUTIONAL PROTECTION, INSTITUTIONAL FAILURE, AND THE VICTIMIZATION OF THE VULNERABLE

4.1 Dalits, Adivasis, and the Constitutional Distance Between Promise and Reality

The Constitution of India contains what is, on paper, one of the most comprehensive constitutional frameworks for the protection of historically marginalized communities in any democratic constitution. Article 17 abolishes untouchability and makes its practice in any form a punishable offence. Article 46 directs the state to promote the educational and economic interests of the scheduled castes and scheduled tribes with special care and to protect them from social injustice and all forms of exploitation. Articles 15(4) and 16(4) permit reservations in educational institutions and government employment for historically disadvantaged communities. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act of 1989, amended in 2015 and 2018, creates a comprehensive framework of offences and penalties for caste-based violence and discrimination.

But the constitutional promise and the social reality are separated by a gulf so wide that it can only be called a constitutional tragedy. The National Crime Records Bureau data consistently shows over 50,000 registered cases of crimes against scheduled castes under the Atrocities Act every year, and this figure represents a significant undercount because a large proportion of atrocities are never reported due to victims' fear of retaliation, social pressure, and lack of faith in the criminal justice system's willingness to act. Manual scavenging, the practice of hand-cleaning sewers and dry latrines that is the most viscerally degrading expression of untouchability, continues to be practiced in many parts of the country despite being made a criminal offence by the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act of 1993 and its 2013 amendment.

The Supreme Court's sensitivity to caste atrocities has been uneven. In Subhash Kashinath Mahajan v. State of Maharashtra in 2018, a two-judge bench of the Supreme Court, in a judgment that attracted immediate and widespread condemnation from Dalit rights organizations, held that the Atrocities Act could not be used to make arrests without prior approval from senior officials, on the stated ground that the Act was being misused to lodge false complaints. The judgment was widely experienced by Dalit communities as a signal that the Court was more concerned about the convenience of potential accused persons than about the protection of victims. Parliament reversed the judgment's practical effect through an amendment in 2018, but the episode illustrated the fragility of constitutional protection against judicial regression in the most sensitive areas of social rights.

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The constitutional reform agenda on Dalit and Adivasi rights must begin with acknowledging that the current framework, however comprehensive on paper, has failed in its fundamental purpose of ending caste discrimination and protecting historically marginalized communities from violence and exploitation. This failure has multiple causes: inadequate implementation of existing laws, inadequate prosecution of offenders, inadequate rehabilitation of survivors, inadequate representation of Dalit and Adivasi communities in the institutions responsible for enforcing their rights, and inadequate political will to challenge the social hierarchies that generate caste violence.

The constitutional reforms required include: first, the constitutionalization of a strong prohibition on caste discrimination in private relationships as well as in public dealings with the state, going beyond the current Article 17 which addresses untouchability but does not extend to the full range of caste discrimination practices; second, the creation of a constitutional Dalit and Adivasi Rights Commission with independent investigative and enforcement powers, comparable to the independent constitutional bodies in the South African Constitution (Chapter 9 institutions) that have genuine authority to investigate violations and to take enforcement action; third, constitutional entrenchment of the Atrocities Act and its successor legislation in a form that cannot be diluted by ordinary parliamentary amendment or by judicial interpretation that reduces its protective scope; fourth, constitutional recognition of the right to land for agricultural communities, addressing the structural landlessness that makes agricultural laborers economically dependent on caste elites and thus practically unable to exercise their legal rights; and fifth, a constitutional commitment to the systematic caste-disaggregated collection and public reporting of data across all government programmes, so that the persistence of caste inequality can be measured, documented, and made the subject of accountable policy responses.

The situation of India's Adivasi (tribal) communities deserves separate constitutional attention. The Fifth and Sixth Schedules of the Constitution create special governance arrangements for tribal areas, with Tribal Advisory Councils and provisions for the application of laws to tribal areas with modifications. The Panchayats (Extension to Scheduled Areas) Act of 1996 (PESA) extended panchayati raj institutions to Fifth Schedule areas with specific protections for tribal land rights and customary practices. The Forest Rights Act of 2006 recognized the pre-existing rights of forest-dwelling communities to forest land that they had traditionally occupied and cultivated.

But the implementation of these constitutional and legislative protections has been systematically subverted by the interests of mining companies, hydroelectric project developers, and the central and state governments that facilitate their operations. Tribal communities have been displaced in the tens of millions by development projects since independence, with inadequate consultation, inadequate compensation, and inadequate rehabilitation. The Supreme Court's judgment in Samata v. State of Andhra Pradesh in 1997, which held that tribal land in Fifth Schedule areas could not be alienated to non-tribals including private corporations, was seen as a landmark protection. But subsequent legislative changes and alternative interpretations have reduced its practical impact.

The constitutional reform agenda for tribal communities must include: a fundamental strengthening of the Fifth and Sixth Schedule regimes to give tribal communities genuine

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constitutional power to consent to or refuse development projects in their territories; a constitutional right to free, prior, and informed consent (FPIC) for all projects affecting tribal land, forest, or water resources, bringing India's constitutional framework in line with the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) to which India is party but which it has not domestically implemented; a constitutional prohibition on the displacement of tribal communities for development projects without their free, prior, and informed consent; and a constitutional guarantee of the Forest Rights Act's protections against dilution by executive circular, departmental instruction, or judicial reinterpretation.

4.2 Women, Constitutional Equality, and the Governance of the Body

India's constitutional framework for gender equality, consisting of the prohibition on sex discrimination in Articles 15 and 16, the specific directive principle requiring equal pay for equal work in Article 39(d), and the numerous legislative enactments covering violence against women, workplace harassment, maternity benefits, and dowry prohibition, represents a substantial body of formal law. And yet the distance between this formal legal framework and the lived experience of the majority of Indian women remains vast.

The National Family Health Survey data, the National Crime Records Bureau data, and the independent research of scholars including Bina Agarwal, Nivedita Menon, and Flavia Agnes converge on a picture of systematic constitutional failure on gender equality. Women own less than 15 percent of land in India despite legal changes to inheritance rights under the Hindu Succession Act and its amendment. Violence against women, including domestic violence, sexual assault, and dowry-related violence, continues at levels that are inconsistent with a constitutional order genuinely committed to gender equality. Women's participation in the formal labor force has declined over the past decades in many states. The gender gap in educational attainment, while narrowing, persists and in some regions remains severe.

The constitutional dimension of these failures is direct. The right to life under Article 21, interpreted to include the right to dignity, the right to security, and the right to live free from violence, is systematically denied to women by the state's failure to prevent or adequately respond to gender-based violence. The right to equality under Article 14, and the specific prohibition on sex discrimination under Article 15, are violated by the persistence of legislative, judicial, and administrative practices that treat women as less than fully equal constitutional citizens.

The Women's Reservation Act, constituted by the 106th Constitutional Amendment of 2023, which provides for one-third reservation of seats in the Lok Sabha and state assemblies for women, represents an important constitutional advance. The 106th Amendment Act of 2023 introduced a one-third reservation of seats in the Lok Sabha and state assemblies, increasing women's involvement in politics and addressing the challenges posed by the patriarchal political environment. PWOnlyIAS But the implementation of this reservation is delayed pending the next census and delimitation exercise, with the delimitation process potentially beginning in 2026 and ultimate rollout of the quotas possibly happening in 2029. ConstitutionNet Critics have pointed out the absence of a specific quota for SC, ST, and OBC women within the reserved

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seats, creating the risk that the reservation will primarily benefit women from more privileged social backgrounds. ConstitutionNet

The constitutional reform agenda on gender equality must go beyond electoral reservation to address the structural conditions that produce gender inequality. This means constitutional entrenchment of equal inheritance rights without qualification, constitutional recognition of women's unpaid reproductive and care labor as economically valuable work that the state must account for in its economic policies, constitutional protection against domestic violence that is enforceable through independent institutions rather than dependent on the willingness of police and courts to take gender-based violence seriously, and constitutional recognition of reproductive rights as fundamental rights within the meaning of Article 21.

The last of these, reproductive rights, is particularly important and particularly contested. The Supreme Court's judgment in X v. Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi in 2022, which held that the Medical Termination of Pregnancy Act's provisions must be interpreted consistently with women's constitutional rights to equality and bodily autonomy, represented an important advance. But the constitutional status of reproductive rights in India remains ambiguous and vulnerable to legislative or judicial retrogression. Constitutional entrenchment of the right of women to make reproductive choices free from coercive state interference, grounded in the right to dignity and bodily autonomy under Article 21, would provide more durable protection than judicial interpretation of existing legislation.

4.3 The Urban Poor, Forced Displacement, and Constitutional Citizenship

India's cities are the material expression of its constitutional order's attitude toward its poorest citizens. The slums, informal settlements, and unauthorized colonies in which an estimated 100 million urban residents live are physical evidence that the constitutional promise of adequate housing, clean water, and sanitation has been honored more in its breach than in its observance. The constitutional right to shelter, recognized by the Supreme Court as part of the right to life under Article 21 in Olga Tellis v. Bombay Municipal Corporation in 1985, has not been given effective institutional expression in the four decades since that judgment.

Olga Tellis itself was a mixed constitutional signal. The Supreme Court recognized the right of pavement dwellers to their means of livelihood but ultimately held that the State could demolish their structures for the purpose of removing encroachments on public land, provided they were given a reasonable opportunity to respond. This formulation, which acknowledges rights while permitting their override in the interest of civic order, has become the model for subsequent judicial treatment of urban displacement. Courts have repeatedly held that the urban poor have a right to be heard before demolition but that the right to adequate housing does not prevent the state from clearing settlements that violate building regulations or occupy government land.

The constitutional reform needed on urban displacement is a fundamental reconception of the state's obligations toward those whose housing is constitutionally inadequate. The current framework, which treats the urban poor as encroachers on land they are occupying out of necessity rather than choice, and which treats demolition as a legitimate state action constrained

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only by procedural requirements, must be replaced by a framework that treats the right to adequate housing as a positive constitutional obligation of the state. States that allow urban populations to live in conditions that violate constitutional dignity guarantees must be constitutionally accountable for that failure, not merely for the procedural propriety of the demolitions they subsequently conduct.

This reframing connects to the broader argument that India's constitutional order has created what the sociologist Partha Chatterjee has called a "political society" in which the urban poor have a conditional and contingent relationship to the state: they receive public services not as constitutional entitlements but as political benefits dependent on their willingness to vote for incumbent parties and on the political calculations of local officials. This conditional relationship is constitutionally intolerable. Constitutional citizenship must mean unconditional entitlement to the fundamental conditions of dignified life, not contingent political favor.

CHAPTER FIVE

THE JUDICIARY IN CRISIS: INDEPENDENCE, ACCESSIBILITY, AND THE CHALLENGE OF CONSTITUTIONAL ACCOUNTABILITY

5.1 The Collegium System, Judicial Appointments, and the Problem of Unaccountable Power

The collegium system of judicial appointments, under which the five senior judges of the Supreme Court effectively control the appointment of all High Court and Supreme Court judges, came into being not through constitutional text but through a series of Supreme Court judgments beginning with S.P. Gupta v. Union of India in 1982 and culminating in the Second and Third Judges' cases of 1993 and 1998. These judgments progressively transferred the constitutional power of appointment, which Article 124 vests in the President (acting on the advice of the executive), to the collegium through the doctrine of the "primacy of the judiciary" in judicial appointments.

The collegium system was established with the genuinely important goal of preventing the executive from packing the courts with judges favorable to the government. The concern that motivated it, illustrated by the Emergency-era experiences of government supersession of senior judges and transfer of judges critical of the government to inconvenient postings, was real and the constitutional response understandable. But the solution has generated its own serious constitutional problems.

The International Commission of Jurists, in a report published in January 2025, assessing the period 2014 to 2024, concluded that there is a series of structural weaknesses in the Indian judicial system. While nominally constitutionally insulated from the executive and legislature, significant scope for external including executive influence remains. The Indian judiciary has itself failed to provide for appropriate self-governance mechanisms that ensure optimal accountability. International Commission of Jurists

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The collegium system is opaque. Its decisions are not subject to any requirement of reasons. The criteria it applies in selecting judges are not publicly known. The deliberative process within the collegium is not disclosed. The result is that judicial appointments are made through a process that is less transparent, less rule-governed, and less accountable than virtually any other major appointment process in Indian public life. Anecdotal evidence consistently suggests that personal relationships, informal networks, regional lobbying, and considerations of seniority within specific High Courts play significant roles in collegium decisions, alongside the formal assessment of judicial quality.

The Supreme Court struck down the National Judicial Appointments Commission (NJAC) in 2015 on the ground that it violated the basic structure by undermining judicial independence. The NJAC, which would have given the Law Minister and two "eminent persons" seats on a six-member commission alongside the Chief Justice, the two most senior Judges, and the LMember, was indeed flawed: the eminent persons' selection process was not adequately insulated from executive influence, and the veto mechanism was ambiguous. But the Court's rejection of the NJAC did not provide a better alternative. It simply restored the collegium, with its profound transparency and accountability deficits, and promised to improve it through memoranda of procedure that have not been finalized years later.

The constitutional reform of judicial appointments requires an approach that preserves genuine judicial independence (by ensuring that the executive cannot determine judicial outcomes through its power to appoint or remove judges) while creating transparency, accountability, and representativeness in the appointment process that the collegium system does not provide. The most promising model in the comparative experience is the independent judicial appointments commission, chaired by an independent figure with genuine security of tenure, composed of a mixture of senior judges, representatives of the legal profession, academics, and lay members representing civil society, with a transparent application and assessment process and a published record of decisions with reasons.

The South African Judicial Service Commission, created under Section 178 of the South African Constitution, provides a model: it includes the Chief Justice, the President of the Constitutional Court, one judge president representing all the others, the Minister of Justice, two practising advocates, two practising attorneys, one academic, six members of the National Assembly, four of whom must be from the opposition, four delegates from the National Council of Provinces, and four persons designated by the President as head of state. This composition, mixing judicial seniority with democratic representation and civil society input, creates an appointments process that is more transparent, more representative, and more publicly accountable than the collegium while maintaining adequate insulation from executive capture.

5.2 The Pendency Crisis and the Constitutional Right to Justice

The pendency of cases in India's court system represents one of the most fundamental constitutional failures of the republic. As of 2025, there are over 53 million cases pending across all courts in India. The Supreme Court has a pending docket of over 85,000 matters. High Courts collectively have over 6 million cases pending. District and subordinate courts have the largest pendency, with over 47 million cases awaiting decision. The average time to reach a final

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decision in a civil case in India has been estimated at between 10 and 20 years in many High Courts, and the wait for justice in cases involving the enforcement of fundamental rights can extend to decades.

This pendency crisis is not merely an administrative problem. It is a constitutional crisis of the most direct kind: the right to seek constitutional remedies under Article 32 and Article 226, which the Supreme Court has described as the "heart and soul" of the Constitution, is effectively non-existent for any citizen who cannot afford to wait a decade or more for a final decision. The formal constitutional guarantee of judicial protection of rights becomes, in practical terms, a guarantee available only to the wealthy, the patient, the well-connected, and the institutionally powerful. For the average citizen whose rights have been violated, the courts offer not justice but a horizon of unattainable resolution.

The constitutional reform framework for the pendency crisis must address the structural causes rather than merely the symptomatic consequences. The structural causes include: severe judicial understaffing, with India having approximately 21 judges per million people compared to 50 to 100 in most developed democracies; the absence of effective case management systems that distinguish urgent from non-urgent cases; the adversarial culture of litigation that incentivizes delay through procedural motions and adjournments; the inadequacy of the Alternative Dispute Resolution infrastructure; and the excessive volume of government litigation, with the government being the single largest litigant in Indian courts and often pursuing hopeless appeals as a matter of institutional culture rather than genuine legal assessment.

A constitutional framework for addressing the pendency crisis would include a constitutionally specified minimum judge-to-population ratio that Parliament must maintain, enforceable by judicial order; a constitutional right to justice within specified time frames in all matters involving fundamental rights; a constitutional obligation on government bodies to maintain litigation budgets and outcome data and to justify continued litigation in matters that have been consistently decided against the government; and a constitutional mandate for the development of a genuinely accessible and adequately funded ADR system as a complement to, rather than a substitute for, judicial justice.

5.3 The Supreme Court's Architecture Problem: Delhi, Distance, and Constitutional Accessibility

The Supreme Court of India sits in New Delhi and only in New Delhi. This geographical concentration of the apex constitutional jurisdiction in a single city in the north of a country of 1.4 billion people spread across 3.3 million square kilometers represents a constitutional accessibility problem of significant proportions. Litigants from Kerala, from Tamil Nadu, from Assam, from Gujarat, must travel to Delhi and hire Delhi-based advocates-on-record to bring their constitutional matters before the Supreme Court. The financial, logistical, and cultural barriers to Supreme Court access are highest for those whose constitutional rights have been most severely violated and who live farthest from the national capital.

The Constitution in Article 130 provides that the Supreme Court shall sit in Delhi but permits the Chief Justice to appoint other places where the Court may sit. Several Chief Justices have floated

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the idea of Supreme Court circuit benches in different regions of the country, and the Law Commission has recommended it. But the proposal has consistently been resisted by the Supreme Court Bar Association, whose members have a significant financial interest in the current arrangement in which all Supreme Court litigation must be conducted through Delhi-based advocates.

The constitutional reform argument for regional circuit benches of the Supreme Court is overwhelming. Constitutional justice must be constitutionally accessible. A Supreme Court that is physically inaccessible to the majority of India's population is not fulfilling the constitutional mandate of Article 32. The creation of regional benches, perhaps modeled on the Australian High Court's practice of regularly sitting in state capitals, would significantly improve constitutional accessibility without compromising the uniformity and consistency of constitutional jurisprudence.

CHAPTER SIX

MEDIA, INFORMATION, AND THE CONSTITUTIONAL FRAMEWORK FOR DEMOCRATIC DISCOURSE

6.1 Press Freedom and the Constitutional Vacuum

The Constitution of India does not explicitly guarantee freedom of the press. Article 19(1)(a) guarantees freedom of speech and expression and has been interpreted by the Supreme Court to include press freedom as a derived right, but the derived nature of press freedom means that it shares the limitations that Article 19(2) permits: restrictions in the interests of sovereignty, integrity, public order, decency, morality, foreign relations, and contempt of court. The breadth of these permitted limitations, combined with the absence of an explicit constitutional guarantee of press freedom, has allowed successive governments to use legal and extralegal mechanisms to constrain media reporting with minimal constitutional pushback.

According to Freedom House's 2024 assessment, India is labeled "Partly Free" with a score of 66 out of 100. The Freedom House report cited increased pressure on journalists, civil society, and dissenters, the use of sedition and anti-terror laws, and intimidation of minorities and critics. India was downgraded from "Free" to "Partly Free" in 2021 and has remained so since. The Theorist

The BJP government introduced several new laws that give the government extraordinary power to control the media, including the Telecommunications Act of 2023, the Broadcasting Services (Regulation) Bill, and the Digital Personal Data Protection Act of 2023. Wikipedia These legislative instruments, taken together, create a comprehensive framework for the regulation, and in practice the control, of media content and communication networks by the executive, with limited judicial oversight and significant scope for discretionary administrative action that is difficult to challenge.

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The murder of freelance journalist Mukesh Chandrakar in January 2025, whose body was found in a septic tank at the residence of a contractor he had been investigating for alleged corruption in road construction, is one of the starkest illustrations of the material consequences of the constitutional vacuum on press freedom. His case drew condemnation from journalist associations and press freedom organizations, highlighting the increasing risks faced by investigative journalists in India, particularly those reporting on corruption and misconduct in remote regions. Wikipedia When journalists who investigate corruption face not merely legal harassment but physical violence, and when the constitutional framework for press freedom is insufficient to provide a meaningful protective environment, the democratic function of the press is effectively extinguished.

The constitutional reform of press freedom requires three simultaneous interventions. The first is an explicit constitutional guarantee of press freedom, analogous to the First Amendment of the United States Constitution or Article 5 of the German Basic Law, that goes beyond the derived guarantee of Article 19(1)(a) and provides specific, named protection for journalistic activity, including the protection of sources, the right to gather information from official sources, the protection against seizure of journalistic materials, and an explicit prohibition on prior restraint of publication.

The second is a constitutional framework for media ownership that prevents the dangerous concentration of media in the hands of industrial conglomerates with interests in the regulatory and fiscal decisions of the government they are supposed to scrutinize. The current situation in which the five largest television news networks are controlled by industrial groups that have extensive business relationships with the government, and in which the government's advertising budget is the largest single source of revenue for many news organizations, creates structural conflicts of interest that make genuinely adversarial journalism economically difficult to sustain. A constitutional provision requiring media ownership disclosure, limiting cross-media ownership concentration, and regulating the allocation of government advertising on viewership-neutral rather than political criteria would address these structural problems.

The third is a constitutional protection for digital freedom of expression that addresses the specific problems of internet shutdowns, social media regulation, and the use of platform content moderation as an instrument of state censorship. India has used internet shutdowns more than any other democracy in the world. The shutdown of mobile internet in Jammu and Kashmir from August 2019 to February 2020 represented the longest internet shutdown ever imposed in a democracy. Subsequent and ongoing shutdowns in various states during periods of civil unrest have become routine instruments of law enforcement that the constitutional framework has been inadequate to prevent.

The Anuradha Bhasin v. Union of India judgment of the Supreme Court in 2020, which held that access to the internet is a fundamental right under Article 19 and that internet shutdowns must be proportionate, necessary, and time-limited, established important constitutional principles. But the principles have not been consistently applied, and the government's practice of ordering shutdowns through executive orders that are kept secret for extended periods has made judicial review ineffective in practice. A constitutional provision explicitly guaranteeing freedom from arbitrary internet shutdowns, requiring judicial authorization for any shutdown of more than 24

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hours' duration, and creating a mandatory public disclosure requirement for all shutdown orders, would give the principles of Anuradha Bhasin constitutional force rather than merely judicial recognition.

6.2 The Right to Information and Its Erosion

The Right to Information Act of 2005 is widely recognized as one of the most important legislative achievements of post-liberalization India. It created an enforceable right of citizens to seek information from public authorities, backed by independent Information Commissions with powers of order and penalty. The Act has been used by citizens, journalists, activists, and civil society organizations to expose corruption, hold bureaucracy accountable, and illuminate the functioning of public institutions that had previously operated in opacity.

But the RTI Act is an ordinary parliamentary statute, not a constitutional provision, and it has been subjected to significant legislative dilution. The RTI (Amendment) Act of 2019 changed the tenure and salary provisions for Information Commissioners, reducing the independence of these oversight bodies by making their appointments more vulnerable to executive pressure. Subsequent administrative practices, including slow appointment of Commissioners, large backlogs in Commissions, and the frequent rejection of RTI applications on grounds of exemption, have reduced the Act's practical effectiveness.

The constitutional reform agenda requires the elevation of the right to information from its current status as a statutory right to the status of a fundamental right under Article 19, as a component of the right to freedom of expression. Such constitutional entrenchment would protect the right to information from legislative dilution, would require the state to maintain Information Commissions that are genuinely independent and adequately staffed, and would prevent the use of blanket exemptions that currently shield significant categories of governmental action from information disclosure.

CHAPTER SEVEN

FOREIGN POLICY, CONSTITUTIONAL ACCOUNTABILITY, AND THE ARCHITECTURE OF REGIONAL ISOLATION

7.1 Parliamentary Oversight of Foreign Policy: The Democratic Deficit

The Constitution of India vests the conduct of foreign affairs entirely in the executive branch, with no requirement for parliamentary approval of treaties, no requirement for parliamentary authorization of military deployments, and no requirement for parliamentary oversight of the intelligence services that gather the information on which foreign policy decisions are based. Article 73 vests executive power in the Union in respect of foreign affairs, and while Article 77 requires all executive action to be taken in the name of the President, the actual conduct of foreign policy is a matter of executive discretion supervised only by the Cabinet and the Prime Minister.

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This executive monopoly on foreign policy has been consistently used to avoid parliamentary accountability on the most sensitive foreign policy questions. The Galwan Valley clash of June 2020, in which twenty Indian soldiers were killed in hand-to-hand combat with Chinese soldiers in eastern Ladakh following a period of Chinese military ingress into areas claimed by India, was the most serious military incident on the Sino-Indian border in nearly half a century. The government's initial response, including official statements that denied any Chinese territorial occupation and delayed full acknowledgment of the casualties, was conducted without parliamentary debate, without a parliamentary statement, and without any formal mechanism for parliamentary scrutiny of either the intelligence failures that allowed the incursion to occur or the diplomatic and military response to it.

The constitutional principle that parliamentary democracy requires parliamentary accountability of the executive for all significant exercises of executive power applies with full force to foreign policy. The notion that foreign policy and national security are inherently executive matters, beyond the competence and legitimate concern of Parliament, is not a principle of constitutional democracy but a residue of the prerogative theory of executive power inherited from the colonial state. In every mature parliamentary democracy, the executive's conduct of foreign policy and national security is subject to parliamentary oversight, often through intelligence and defense committees with access to classified information under secrecy obligations.

The constitutional reform of foreign policy accountability requires the creation of a constitutionally mandated Parliamentary Foreign Affairs and Security Committee with members from all significant parties, a formal remit to oversee the executive's conduct of foreign policy and national security, security-cleared access to classified briefings, and the power to report to Parliament on matters of constitutional significance. This committee should be modeled on the Joint Intelligence Committee oversight mechanisms of the United Kingdom or the Senate Foreign Relations Committee and Senate Intelligence Committee of the United States, adapted for India's parliamentary context.

Treaty-making, which currently requires no parliamentary approval, should be brought under constitutional control. The Parliament of Germany must ratify treaties with political and legislative significance under Article 59 of the Basic Law. India's constitution should similarly require parliamentary ratification of treaties affecting citizens' rights, the allocation of territory, trade and economic relationships, and defense cooperation. The Parliament's role in foreign policy should be not merely ornamental but constitutionally substantive.

7.2 The Neighbourhood Policy and Its Constitutional Dimensions

India's relationships with its immediate neighbors, Pakistan, Bangladesh, Nepal, Sri Lanka, Myanmar, Bhutan, and China, are characterized by a degree of mutual suspicion, recurring crisis, and strategic failure that has no adequate parallel in any other major democracy's relationship with its neighbors. The reasons for this are multiple and complex, including the specific histories of partition, the territorial disputes inherited from colonial boundary-making, and the demographic and ethnic complexities that create cross-border minority concerns in every bilateral relationship.

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But the constitutional dimensions of India's troubled neighborhood relations, analyzed in Part Eighteen, deserve renewed examination in the context of the reform agenda. The constitutional culture of nationalism that has intensified since 2014, combined with the constitutional silence on parliamentary oversight of foreign policy, has produced a foreign policy environment in which the government is simultaneously domestically unaccountable for its foreign policy choices and internationally unreliable as a negotiating partner because domestic political pressure can override diplomatic commitments.

The reform of India's neighborhood policy requires not merely new diplomatic strategies but changes in the constitutional environment that shapes those strategies. A constitutional framework that required parliamentary accountability for foreign policy, that created independent constitutional mechanisms for the protection of minority rights in ways that reduced the internal-external linkages that complicate bilateral diplomacy, and that created genuinely independent institutions for cross-border economic and cultural cooperation, would create better conditions for the patient diplomacy that India's neighborhood relationships require.

The Citizenship Amendment Act of 2019, and the constitutional transformation of citizenship law that it represents, has direct implications for India's relationships with Bangladesh and Afghanistan. The CAA created a differential citizenship pathway for Hindu, Sikh, Buddhist, Jain, Parsi, and Christian minorities from Afghanistan, Bangladesh, and Pakistan who entered India before December 31, 2014, explicitly excluding Muslim minorities from the same countries. This differential treatment, justified on the ground that Muslim minorities in Muslim-majority countries cannot be persecuted on grounds of religion, has been challenged on constitutional grounds and has damaged India's relationships with both Bangladesh and Afghanistan.

The constitutional reform of citizenship law requires the restoration of the universalism of citizenship as a constitutional principle, removing the religion-based differential established by the CAA and restoring the commitment of the constitutional text to non-discrimination on grounds of religion in all governmental action. This restoration is not merely a matter of foreign policy management. It is a constitutional imperative flowing from Article 14's prohibition on arbitrary discrimination and Article 15's prohibition on discrimination on grounds of religion.

CHAPTER EIGHT

THE COMPREHENSIVE REFORM PROPOSAL: TOWARD A CONSTITUTIONAL ARCHITECTURE FOR THE TWENTY-FIRST CENTURY

8.1 The Incremental versus Foundational Debate Revisited

The analysis across the preceding seven chapters of this part, read together with the analysis of Parts One through Eighteen, produces a reform agenda of remarkable scope. The reforms required are not minor adjustments to a fundamentally sound constitutional order. They are structural transformations of an order whose foundations are significantly compromised by

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colonial inheritance, by design choices that reflected the interests of an unrepresentative elite, by seven decades of exploitation by successive governments for purposes of power retention rather than democratic governance, and by the accumulation of constitutional amendments that have progressively concentrated rather than distributed power.

The question that confronts the honest analyst at this point is the question that has recurred throughout this series of commentaries: can these structural transformations be achieved through the existing constitutional amendment process, or does the depth of the problem require a genuinely new constitutional beginning through a new constituent process?

The case for incremental constitutional reform, working within the existing Article 368 framework, is pragmatic and serious. Constitutional replacement is politically extraordinarily difficult. It requires the creation of a new constituent body, which in India would require parliamentary legislation to establish and would thus require the support of a parliamentary majority that has an interest in the existing constitutional arrangements. It risks, in the wrong political moment, producing a new constitution that is worse rather than better than the existing one: a constitution drafted by a majoritarian government to enshrine permanent majority rule could be more restrictive of rights, more centralizing in its power architecture, and less protective of minorities and dissenters than the existing framework.

The case for constitutional replacement is philosophical and ultimately more compelling. The accumulated problems of the existing constitutional framework are not correctable through incremental amendment, for the reason that every major amendment requires the support of the very political forces that have the greatest interest in maintaining the existing concentrations of power. The colonial inheritance embedded in the structure of executive authority, in the emergency provisions, in the Governor's office, and in the security law architecture cannot be excised by adding new articles while leaving the old structure in place. The colonial DNA is in the original code, and overwriting selected genes while leaving the original sequence intact will not produce a genuinely different organism.

Bruce Ackerman's theory of constitutional moments, considered in Part Eighteen, identifies the conditions under which genuinely transformative constitutional change is democratically possible: heightened popular political engagement, a political debate that forces fundamental constitutional questions into the public sphere, and institutional mechanisms through which popular will can be translated into constitutional change. India has generated moments of constitutional energy in the anti-Emergency movement, the RTI movement, the farmers' protests, and the CAA protests. What it has lacked, and what a reform agenda must create, are the institutional mechanisms through which that energy can be channeled into constitutional transformation.

8.2 A New Constituent Process: Design Principles and Procedural Requirements

If the people of India are to exercise the constituent power that republican constitutional theory recognizes as theirs, they must do so through a process that genuinely expresses that power rather than one that is merely a procedural legitimation of elite choices made through existing

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institutional channels. The design principles for such a process, drawn from the best comparative experience and from the insights of deliberative democratic theory, include the following.

First, the constituent body must be genuinely representative of India's population in all its dimensions: caste, gender, religion, region, language, economic class, age, and occupation. The composition of the body should not be determined by existing political parties alone. It should include representatives elected from constituencies drawn to ensure adequate representation of historically marginalized groups, representatives chosen by sortition (random selection from the population) to ensure that the body includes ordinary citizens rather than only political professionals, representatives of civil society organizations with documented presence in specific communities, and representatives of the legal, academic, and civil society communities whose expertise in constitutional design is relevant to the deliberative task.

The Citizens' Assembly model, pioneered in Ireland's constitutional reform processes of 2016 to 2018 and adapted in different forms in several Canadian provinces, provides a model for how ordinary citizens can be brought into constitutional deliberation through random selection and structured deliberation. The Irish Citizens' Assembly, which deliberated on abortion rights, same-sex marriage, and other constitutional questions, demonstrated that randomly selected citizens, given adequate time, information, and facilitative support, can engage with complex constitutional questions with extraordinary seriousness and sophistication.

Second, the deliberative process of the constituent body must be genuinely open and transparent. Deliberations should be conducted in public except where specific matters require confidentiality for security reasons. Records of deliberations should be publicly available. Citizens and civil society organizations should have the opportunity to make submissions to the body on any matter within its remit. The body should conduct public hearings in all regions of the country, in all major languages, so that the constitutional conversations are not restricted to the English-speaking elite in major cities.

Third, the constituent body must operate independently of the existing government. Its funding must be constitutionally protected from executive interference. Its members must have constitutional protection against removal, pressure, or inducement while they serve. The government of the day must have no power to direct, delay, or terminate the constituent process.

Fourth, the outcome of the constituent process must be submitted to direct popular ratification. A new constitution, or fundamental constitutional reforms of the kind that effectively constitute a new constitutional beginning, must be approved by a referendum in which all adult citizens can participate. The threshold for ratification should be set at a level that requires genuine cross-regional and cross-demographic support, not merely a simple majority of a single national vote that could be swayed by a transient political wave.

Fifth, the transition to the new constitutional framework must be managed through independent institutions that are not subject to control by the existing government. The Election Commission, the Supreme Court, and the civil service must remain operational and independent during the transition period, ensuring that the new constitutional order comes into force through a process that is lawful, orderly, and democratically legitimate.

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8.3 The Minimum Constitutional Content: Non-Negotiable Foundations

Whatever process produces the reformed or new constitutional order, and whatever the specific contents of the constitutional text that emerges from that process, there are certain constitutional minimum requirements that the analysis of this textbook's nineteen parts has identified as non-negotiable foundations of a genuinely democratic, just, and rights-protective constitutional order for India. These minimum requirements are derived not from any particular ideological preference but from the most fundamental insights of constitutional theory, the most consistent findings of comparative constitutional experience, and the most urgent lessons of India's own constitutional history.

The first minimum requirement is the genuine separation of powers, implemented through institutional arrangements that are structurally independent rather than merely formally distinct. The executive, legislative, and judicial branches must each have the independence, the resources, the constitutional protection, and the institutional culture necessary to perform their constitutional functions without fear or favor toward the other branches. This requires, among other things, the elimination of the Governor's office as a central government instrument, the genuine independence of investigative agencies from political direction, the reform of the judicial appointments process along the lines discussed above, and the strengthening of parliamentary oversight institutions including committee systems, the Comptroller and Auditor General, the Election Commission, and the National Human Rights Commission.

The second minimum requirement is genuine fiscal federalism. States must have adequate constitutional authority to raise the revenues required to discharge their constitutional responsibilities without dependence on central transfers that carry conditions that override their legislative autonomy. This requires, at minimum, the constitutional entrenchment of states' own revenue sources, the constitutional bindingness of Finance Commission recommendations, and the constitutional framework for inter-governmental relations that ensures cooperative federalism is genuinely cooperative rather than federalism in name only.

The third minimum requirement is the justiciable entrenchment of social, economic, and cultural rights alongside civil and political rights. The dichotomy between enforceable civil and political rights and non-enforceable directive principles has, as this textbook has argued throughout, been one of the most damaging constitutional choices of the original framers. Its damage has been mitigated by the Supreme Court's expansive interpretation of Article 21 to incorporate many social rights, but this mitigation is fragile, dependent on judicial activism that cannot be relied upon in all political environments. Constitutional entrenchment of rights to education, health, housing, food, and livelihood as justiciable fundamental rights, enforceable through independent institutions with adequate remedial powers, is essential.

The fourth minimum requirement is a constitutional framework for the genuine protection of all minorities, linguistic, religious, caste, gender, and sexual, that goes beyond the formal non-discrimination provisions of the existing constitution to address the structural conditions of vulnerability and the institutional failures of protection that have allowed systematic discrimination and violence to continue under a formally non-discriminatory constitutional order.

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The fifth minimum requirement is a constitutional order that is genuinely the property of India's citizens, not merely of its political and legal elite. This requires not only the procedural democratization of the constitutional amendment and replacement process but the substantive commitment to constitutional literacy and civic education that makes constitutional citizenship meaningful for people who have not had the benefit of legal education. A constitution that is too complex for most citizens to understand, that is accessible only through expensive legal intermediaries, and that is experienced by most citizens as something done to them rather than something done by them, has failed the fundamental test of democratic self-governance.

8.4 On the Urgent Necessity of Reform: Why the Present Moment Is Critical

Part Nineteen of this textbook is being composed in 2026, at a moment when the constitutional pressures described throughout this series are acute and intensifying. The Economist Intelligence Unit's Democracy Index for 2023 classified India at rank 108 out of 167 countries with the status "Flawed Democracy." The V-Dem Institute in its 2024 Democracy Report classified India as an "Electoral Autocracy." The Theorist These assessments, from organizations with rigorous and established methodologies, represent a consistent external verdict on the direction of India's constitutional democracy that deserves to be taken with the seriousness it warrants rather than dismissed as foreign interference or ideological bias.

The specific constitutional markers of this deterioration are documented in detail across this textbook's nineteen parts and confirmed by recent reports. The ICJ's January 2025 report on judicial independence in India, covering the decade 2014 to 2024, found retrogressive developments in respect of judicial independence, including in the process of selection and appointment of judges, transfer of judges between High Courts, removal of judges, and aspects of judicial administration such as the listing and allocation of cases and post-retirement employment of judges. International Commission of Jurists

The direction of constitutional travel, with the introduction of One Nation One Election proposals that would dramatically centralize electoral power, with the 130th Amendment's mechanism for removing elected governments through executive arrest power, with the continuing judicial challenges to UAPA's pretrial detention provisions that remain unresolved, and with the constitutional environment that has allowed internet shutdowns, press freedom restrictions, and the use of investigative agencies against political opponents to become routine features of governance, is not toward greater democracy, greater rights protection, or greater constitutional fidelity. It is toward the constitutional retrogression that Ginsburg and Huq have identified as the characteristic path of democratic decline in the twenty-first century.

The urgency of constitutional reform is not merely academic. It is a matter of the lives, liberties, and futures of 1.4 billion people who were promised, in the Preamble of the Constitution adopted on January 26, 1950, a sovereign socialist secular democratic republic that would secure for all its citizens justice (social, economic, and political), liberty (of thought, expression, belief, faith, and worship), equality (of status and of opportunity), and fraternity (assuring the dignity of the individual and the unity and integrity of the nation). Seventy-five years after that promise was made, the distance between the promise and the reality remains enormous. The direction of constitutional travel in 2026 threatens to increase rather than decrease that distance.

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The argument of this textbook is not that India's constitutional democracy is finished. India's democracy has shown remarkable resilience in the face of enormous pressures. The anti-Emergency movement of 1975 to 1977 demonstrated that Indian citizens and Indian democratic institutions could resist authoritarianism and restore constitutional order. The RTI movement of the 2000s demonstrated that civil society mobilization could achieve significant constitutional advances. The farmers' protest of 2020 to 2021 demonstrated that organized popular resistance could compel the government to reverse agricultural legislation it had passed with its parliamentary majority. The Supreme Court, at its best, has demonstrated that Indian judges can deliver courageous judgments that protect rights against powerful governmental interests.

The argument is that resilience is not the same as adequacy, that democratic resistance to constitutional retrogression is not the same as constitutional reform, and that the accumulated failures of the existing constitutional order have reached a severity that requires not merely defensive resistance but affirmative reconstruction. The people of India deserve a constitutional order that is not merely survivable but flourishing, not merely resistant to the worst but affirmatively productive of the best that constitutional democracy can offer: genuine liberty, genuine equality, genuine justice, and a genuine sense that the state is the instrument of the people rather than an inheritance from their colonizers.

CHAPTER NINE

THE THEORETICAL SYNTHESIS: JURISPRUDENTIAL FOUNDATIONS FOR A NEW CONSTITUTIONAL IMAGINATION

9.1 Post-Colonialism and the Grammar of Constitutional Liberation

Frantz Fanon's argument in The Wretched of the Earth that colonial liberation requires not merely the replacement of colonial personnel with indigenous ones but the genuine dismantling of colonial structures of domination has been rehearsed throughout this textbook. Its jurisprudential implications deserve systematic synthesis as this series of commentaries approaches its conclusion.

The colonial structures that the Constitution of India has preserved or replicated are not merely administrative inconveniences. They are constitutional expressions of a particular theory of the relationship between the state and its subjects: a theory in which the state is the source of social order, the arbiter of political legitimacy, the controller of economic resources, and the ultimate authority over the conditions of social life. This theory, which Edward Said's Orientalism helps us understand as also a theory of cultural and epistemic domination, is incompatible with the democratic theory of the state as the instrument of popular will.

The post-colonial constitutional imagination, developed in the work of scholars from Upendra Baxi to Rajeev Bhargava to Sudipta Kaviraj, argues for a different kind of constitutional order: one that begins not with the state and its powers but with the people and their rights, not with the administrative requirements of a territorial polity but with the social requirements of

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communities seeking to govern their own lives, and not with the inherited structures of colonial modernity but with the indigenous traditions of deliberation, self-governance, and moral community that colonial rule disrupted but did not destroy.

This post-colonial constitutional imagination does not require the romantic invention of an idealized precolonial past that never existed. Ambedkar's powerful critique of Gandhian village romanticism, his insistence that the village in historical India was not a community of equals but a hierarchy of caste oppression, remains the necessary corrective to any constitutional vision that confuses traditional with just. But the post-colonial imagination does require the recovery of the constitutional possibilities that the colonial experience closed down: the possibilities of local self-governance that actually governs rather than merely administering, of customary law that actually represents community norms rather than serving elite interests, and of constitutional participation that actually involves the people rather than merely soliciting their periodic electoral endorsement of elite choices.

The constitutionalization of panchayati raj through the 73rd and 74th Amendments was a partial step toward this post-colonial constitutional vision. Its inadequacy, as documented throughout this textbook, lies in the gap between constitutional form and constitutional substance: panchayats exist on paper and hold elections, but they do not have the resources, the powers, or the administrative support to exercise genuine self-governance. The constitutional reform agenda must close this gap by genuinely devolving power, resources, and accountability to the local level.

9.2 Republican Constitutionalism and the Structure of Non-Domination

Philip Pettit's republican political philosophy, which defines freedom as the absence of domination rather than merely the absence of interference, provides the theoretical scaffolding for understanding what is constitutionally wrong with a political system in which millions of citizens cannot effectively exercise their constitutional rights not because those rights are formally denied but because the structural conditions of their lives prevent effective exercise.

Pettit's concept of domination, the situation in which one party has the arbitrary power to interfere with another's choices even if it does not actually exercise that power, applies with precision to the constitutional situation of India's most vulnerable populations. The agricultural laborer who cannot effectively exercise the right to minimum wages because the landlord who pays the wages also controls access to housing, credit, and social services is not merely economically dependent. She or he is constitutionally dominated: the very existence of the landlord's power to interfere prevents the effective exercise of constitutional rights that formally exist. The tribal community that cannot effectively exercise the right to free, prior, and informed consent for a development project because the state controls the resources on which it depends is not merely politically disadvantaged. It is constitutionally dominated.

A republican constitutional framework, as Pettit elaborates it, must address not merely formal rights but the structures of domination that prevent their effective exercise. This requires constitutional provisions that address economic domination (through land reform, labor rights, and social security guarantees), political domination (through genuine electoral competition free

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from the distortions of money and patronage), social domination (through the constitutional prohibition and active remediation of caste and gender hierarchies), and epistemic domination (through the constitutional guarantee of access to information, education, and the communicative resources needed to participate meaningfully in democratic life).

9.3 Rawlsian Justice and the Constitution of the Least Advantaged

John Rawls's difference principle, the component of his theory of justice in A Theory of Justice that permits social and economic inequalities only to the extent that they benefit the least advantaged members of society, provides a powerful constitutional standard against which India's existing constitutional order can be measured. The question, on Rawlsian grounds, is not whether India's constitution permits inequality but whether the inequalities it permits benefit the least advantaged. The evidence of seven decades, reviewed throughout this textbook, provides a clear answer: the constitutional order has systematically tolerated and often facilitated inequalities that do not benefit the least advantaged but that serve the interests of the already privileged.

The constitutional architecture that Rawlsian principles would require is one that makes the constitutional minimum, the floor of rights, resources, and opportunities guaranteed to every citizen, the primary object of constitutional design rather than an afterthought constrained by fiscal limitation. This means constitutionally justiciable social rights, constitutionally mandated minimum standards of public services, constitutionally enforced redistribution through progressive taxation and social security, and a fiscal federalism that ensures adequate resources reach the least advantaged citizens wherever they live.

The Rawlsian perspective also illuminates the constitutional failure of India's reservation system, which has provided some access to the least advantaged (or at least to the constitutionally recognized categories of the disadvantaged) in education and public employment but has not addressed the structural conditions of inequality that make reservation necessary. A Rawlsian constitutional framework would require not merely compensatory reservation but transformative policies that change the structural conditions that generate the educational gaps, the social hierarchies, and the economic exclusions that reservation is trying to compensate for.

9.4 Dworkin's Interpretivism and the Moral Reading of the Constitution

Ronald Dworkin's constitutional theory, which argues that constitutional interpretation must take the moral content of constitutional provisions seriously and must seek the best moral reading of constitutional text rather than merely its historically intended meaning, provides a framework for understanding both the achievements and the failures of Indian constitutional jurisprudence.

The Supreme Court's expansion of Article 21 to include privacy (K.S. Puttaswamy), dignity, and a growing range of social and economic rights is best understood as a Dworkinian moral reading: the Court is treating the constitutional guarantee of "life and personal liberty" as expressing a moral commitment to human dignity and flourishing that goes beyond any historically specific understanding of those words and that must be interpreted in light of the best moral account of what constitutional liberty requires.

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This interpretive approach has produced some of the most important constitutional advances in Indian history. But it has also revealed the limits of judicial moral reading as a substitute for democratic constitutional change. When the Court expands rights through interpretation, those expansions are vulnerable to being contracted by subsequent courts that take a different moral view. When the Court reads social rights into Article 21, the implementation of those rights depends on executive compliance that is politically contingent. When the Court's moral reading leads it to strike down legislation, the Court is making a political judgment that, however principled, is made by an institution that is not democratically accountable in the way that constitutionally transformative decisions should be.

Dworkin's interpretivism is most valuable not as a prescription for judicial activism but as a standard for evaluating constitutional provisions and institutional arrangements: do they express the moral commitments that a genuinely just constitution must express? Do they embody genuine respect for the equal dignity and moral worth of every citizen? Do they create institutional conditions in which every person's rights are taken seriously? By this standard, the Constitution of India falls short in the specific ways this textbook has documented, and the reform agenda is the agenda of institutional reconstruction necessary to close the gap between constitutional text and constitutional reality.

9.5 Tarunabh Khaitan's Constitutional-Cuts and the Aggregative Analysis

The concept of "constitutional-cuts" developed by Tarunabh Khaitan, whose work on Indian constitutional erosion has become essential reading for contemporary constitutional scholars, deserves extended treatment as a theoretical tool for understanding the mode of constitutional deterioration that India is experiencing.

Constitutional-cuts are constitutional design features that, individually, are small or arguably defensible but that, in aggregate, significantly tilt the constitutional playing field in favor of incumbents and against democratic competition and constitutional accountability. Khaitan's examples from the Indian context include: the executive-dominated Election Commission appointment process; the UAPA's bail provisions; the anti-defection law's suppression of legislative independence; the Governor's discretionary powers; the money bill procedure; the weak media ownership regulation; the financial and geographic barriers to judicial access; the opacity of public interest litigation standing requirements; and many others.

What makes Khaitan's constitutional-cuts analysis so important for the reform agenda is its identification of the aggregative nature of constitutional deterioration. Each cut is deniable as a systemic problem. Each cut can be defended in isolation with arguments about administrative efficiency, national security, governmental stability, or institutional competence. But the cumulative effect of the cuts is a constitutional landscape that has been systematically redesigned to make incumbent power more durable, democratic accountability less effective, and constitutional rights more difficult to enforce.

The reform response to constitutional-cuts must be equally systematic. It cannot address only the most visible and egregious violations while leaving the aggregative structure of smaller cuts in place. It must engage with the full architecture of constitutional design, identifying and

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eliminating those features that, individually or collectively, serve to disable the mechanisms of democratic accountability and constitutional protection.

This is precisely the kind of comprehensive constitutional reform agenda that this textbook's nineteen parts have been constructing: not a list of isolated grievances but a systematic analysis of a constitutional order that is failing in interconnected ways, and a comprehensive prescription for the interconnected reforms that could, taken together, constitute a genuinely different constitutional order.

9.6 The Constitutional Theory of Violence and the State's Legitimate Monopoly

Max Weber's definition of the state as the entity that successfully claims the monopoly of legitimate use of physical force within a given territory provides a foundational lens for examining one of the most persistent and disturbing constitutional failures documented in this textbook: the state's use of force against the very citizens whose rights it is constitutionally obligated to protect.

The constitutional legitimacy of the state's use of force depends on its being authorized by law, limited in scope, proportionate in application, subject to judicial oversight, and accountable through democratic processes. When the state uses force that is not authorized by constitutional law (police brutality, custodial torture, extrajudicial killing), the state's claim to legitimate authority is undermined. When the state uses constitutionally authorized instruments (UAPA, NSA, AFSPA) in ways that exceed their legitimate scope (using anti-terrorism laws against political activists, using emergency powers against democratic protests), the constitutional legitimacy of those instruments is itself called into question.

Walter Benjamin's distinction between law-founding violence (constituent violence that establishes the legal order) and law-preserving violence (the executive violence that maintains the existing legal order) provides a more radical lens. Benjamin argues that law-preserving violence inevitably tends toward the corruption of the legal order it preserves, because it substitutes the threat of force for the genuine legitimacy that a just law would derive from its content. Applied to India, Benjamin's analysis suggests that the extensive use of preventive detention, security law, and police power to maintain the constitutional order has progressively corrupted that order: the state that maintains itself through force rather than legitimacy has lost the moral authority to claim that its legal order is genuinely binding on those it governs.

The constitutional reform agenda's response to this analysis is the construction of an alternative foundation for constitutional legitimacy: one based on genuine popular consent, genuine rights protection, genuine accountability, and genuine inclusion rather than on the capacity to suppress dissent and manage populations through the tools of colonial-era administration.

CHAPTER TEN

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CONCLUSION OF PART NINETEEN: THE DEMOCRATIC IMPERATIVE AND THE PATH FORWARD

10.1 The Scale of What Is Required

The reform agenda developed across this Part's nine chapters is substantial. It encompasses electoral reform, security law reform, judicial reform, fiscal federalism reform, media freedom reform, tribal and minority rights reform, foreign policy accountability reform, and the foundational question of whether a new constituent process is necessary to achieve the depth of constitutional transformation that is required. Each of these domains has been analyzed in technical detail, with reference to comparative experience, constitutional theory, and the specific lessons of Indian constitutional history.

The scale of the reform agenda should not be paralyzing. It reflects the scale of the constitutional problem. An inherited colonial constitution that has been used for seventy-five years by a succession of governments that have found its centralizing features useful, that has been amended over 106 times to accommodate the interests of successive power-holders, and that has been interpreted by courts that have been subject to varying degrees of independence and varying levels of progressive commitment, inevitably requires substantial reconstruction if it is to become a genuinely liberatory constitutional order.

The scale also reflects a certain optimism. The scale of the reform agenda is the scale of the opportunity. A comprehensive constitutional reform, undertaken through a genuinely democratic process, would represent the most significant political transformation in India's post-independence history. It would represent the completion of the democratic project that the independence movement began but the inherited colonial constitution could not fully deliver: a state genuinely owned by its citizens, genuinely accountable to the people, genuinely committed to the equal dignity and equal rights of every human being within its territory regardless of caste, religion, gender, region, or economic condition.

10.2 The Political Economy of Reform: Who Gains and Who Resists

Every constitutional reform proposal generates a political economy question: who benefits from the proposed change, and who loses? The answer to this question determines who will support the reform and who will resist it, and therefore whether the reform can achieve the political coalition necessary for its adoption.

The structural reforms proposed in this Part would benefit the majority of India's citizens: the poor, whose social and economic rights would be strengthened; the marginalized, whose access to constitutional justice would be improved; the regional, whose state governments would gain genuine fiscal autonomy; the journalist, whose constitutional protection against governmental intimidation would be strengthened; the tribal community, whose rights to land and forest resources would be constitutionally secured; the political activist, whose right to dissent would be protected against security law abuse; and the average voter, whose electoral choices would be given more proportionate constitutional weight.

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The reforms would disadvantage, or at least constrain, those who currently benefit from the existing constitutional arrangements: the Union government, whose centralizing powers would be reduced; the ruling party, whose ability to use Governor appointments, President's Rule, and security laws as political tools would be constrained; the corporate elite, whose access to regulatory favor through political donations would be made more difficult; the senior judiciary, whose self-appointing collegium system would be reformed; and the administrative class, whose inherited colonial culture of authority rather than service would be challenged.

This political economy does not counsel despair. Majorities of beneficiaries do not always triumph over well-organized minorities of benefactors. But it does counsel realism about the political preconditions of reform. Constitutional reform of the depth proposed in this textbook is unlikely to be initiated by the political forces that have the most to gain from the existing constitutional arrangements. It will be initiated, if at all, by the combination of crisis, civic pressure, and political leadership that occasionally generates what Ackerman calls a constitutional moment.

The conditions for such a moment may be closer than they appear. The increasing concentration of power, the democratic deterioration measured by international indices, the accumulating frustrations of state governments with fiscal subordination to the Centre, the civil society and judicial resistance to security law abuses, the farmers' movement's demonstration of the mobilizing potential of ordinary citizens, and the international environment of constitutional renewal generated by new constitutions in Kenya, Bolivia, and elsewhere, all create a context in which the demand for constitutional transformation is not merely academic but potentially political.

10.3 The Duty of Constitutional Scholarship

This textbook has been written in the conviction that constitutional scholarship has a duty that goes beyond the documentation of what the law is. It has a duty to articulate what the law should be, to explain why existing law fails the people it governs, and to contribute to the intellectual preparation for the constitutional change that justice requires.

This is not an invitation to political partisanship. The critical analysis in these nineteen parts has engaged with constitutional failures that span political parties of all ideological persuasions. The Congress party bears as much responsibility as the BJP for many of the constitutional failures documented here. The Supreme Court has been as guilty of judicial cowardice in some periods as it has been courageous in others regardless of which government appointed its judges. The constitutional predicament of India is a structural problem, not a partisan one, and its solution must be sought through structural analysis and structural reform, not through the replacement of one party's government with another's.

What this textbook advocates is a constitutional seriousness that matches the constitutional stakes. A country of 1.4 billion people, the world's most populous democracy, facing simultaneous challenges of economic inequality, caste and gender discrimination, communal tension, regional diversity, environmental crisis, and geopolitical pressure, needs a constitutional order adequate to those challenges. The existing constitutional order, whatever its genuine

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achievements, is not adequate. The gap between its promises and its deliveries, documented across nineteen parts of sustained scholarly analysis, is the measure of the constitutional work that remains to be done.

That work is the work of every constitutional scholar, every legal practitioner, every judge, every legislator, every civil society activist, and every citizen who takes seriously the constitutional promise that was made in the Preamble of January 26, 1950. The promise of justice. The promise of liberty. The promise of equality. The promise of fraternity. A nation that made that promise to itself seventy-five years ago has not yet kept it. The keeping of it is the constitutional task of this generation and the next.

Part Twenty of this textbook will address the global context of India's constitutional reform challenge, examining the international constitutional environment of 2026, the emerging frameworks of comparative constitutional law, the implications of India's constitutional trajectory for global democratic norms, and the contribution that a reformed India, with a genuinely democratic and rights-protective constitutional order, could make to the world's increasingly urgent project of defending and renewing constitutional democracy against the authoritarian pressures of the twenty-first century.

END OF PART NINETEEN

This textbook is part of an ongoing series of jurisprudential, historical, philosophical and political commentaries on the Constitution of India. Parts One through Eighteen addressed the colonial inheritance, the architecture of executive power, federalism, fundamental rights, the criminal justice system, the economy, media, foreign policy, and the comprehensive case for constitutional overhaul. Part Nineteen has developed the detailed reform agenda across all major domains of constitutional dysfunction. Part Twenty will complete the series with an analysis of the global constitutional context and India's potential contribution to the renewal of constitutional democracy worldwide.

All constitutional references are to the Constitution of India as amended through the 106th Constitutional Amendment Act of 2023. References to recent constitutional developments including the 129th Amendment Bill of 2024 on simultaneous elections, the 130th Amendment Bill of 2025 on ministerial removal upon detention, and international assessments of India's democratic condition reflect developments through April 2026. All interpretive positions expressed are those of the author as a contribution to constitutional scholarship

PART TWENTY

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THE FINAL RECKONING: THE CASE FOR CONSTITUTIONAL ABOLITION, RADICAL TRANSFORMATION, AND THE BIRTH OF A TRULY SOVEREIGN DEMOCRACY

A Note on Part Twenty

This is the concluding and most ambitious part of this twenty-part commentary. What precedes these chapters has documented, layer by layer, the colonial origins of India's constitutional structure, the distortion of fundamental rights, the perversion of federalism, the corruption of judicial independence, the weaponization of emergency powers, the commodification of electoral democracy, the intellectual deceptions embedded in the Preamble, the betrayal of Directive Principles, the abuse of Article 356, the criminalization of dissent through sedition and its renamed successors, the emasculation of minority rights, the constitutional legitimation of caste violence, and the systematic impoverishment of those very people in whose name the document was proclaimed.

Part Twenty does not summarize what came before. It goes further. It asks the question that every preceding chapter has slowly made inevitable: is the Indian Constitution, in its present form and its operational reality, a document that can be repaired by amendment, or does the depth of its pathology demand something more radical, more honest, and more genuinely revolutionary? It examines the total architecture of constitutional failure from the summit, bringing together historical analysis, jurisprudential philosophy, political theory, sociological evidence, and the very latest developments from 2024 to 2026, to make a case that the people of India have not yet been given a constitution that truly belongs to them.

CHAPTER ONE

THE CULMINATION OF CONSTITUTIONAL CRISIS: WHY THE SYSTEM CANNOT REPAIR ITSELF FROM WITHIN

I. The Problem of Self-Referential Constitutional Systems

There is a paradox at the heart of every constitutional order that has accumulated too much power in too few hands for too long. The paradox is this: the very institutions that are broken are the ones responsible for fixing themselves. The Parliament that enacts unconstitutional laws is the Parliament that would need to pass reforms. The executive that concentrates power is the executive that must approve new power-sharing arrangements. The judiciary that has drifted toward institutional deference is the judiciary tasked with enforcing constitutional boundaries. When all three branches of government have been compromised, when the constitutional culture has been corroded over decades, and when the document itself contains within it the architecture of its own distortion, asking the system to reform itself is like asking a disease to prescribe its own cure.

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This is the fundamental problem of Indian constitutionalism in 2026. After seventy-six years of independence, after one hundred and six constitutional amendments, after thousands of Supreme Court judgments, after the Emergency, after multiple Presidents Rule abuses, after the rise and consolidation of majoritarian nationalism, after the systematic erosion of press freedom and judicial independence that accelerated dramatically after 2014 and continued unabated through 2025, the Indian constitutional system has arrived at a point of structural exhaustion. The tools that were supposed to keep the system honest, the basic structure doctrine, the writs, the independent commissions, the federal distribution of powers, the Directive Principles, the separation of powers, have all been bent, blunted, or bypassed.

What the Indian constitutional tradition has not been able to produce in three quarters of a century is a constitutional culture of genuine citizen sovereignty. The document says "We, the People" in its Preamble. But the people were not the authors of the Constitution. The people did not ratify it through a referendum. The people were not consulted in any meaningful democratic sense about the document that would define the terms of their subjection. The people, in the overwhelming majority poor, illiterate, landless, casteless, and voiceless, were represented in the Constituent Assembly by an elite of lawyers, industrialists, princes, and landed aristocrats who themselves reflected the biases, interests, and intellectual frameworks of a colonial education. When scholars like B.R. Ambedkar warned on the floor of the Constituent Assembly that the Constitution was being framed by people who could not be trusted to implement it fairly, he was speaking from precisely this recognition.

The result, as the political scientist Tripurdaman Singh observed in his foundational analysis published in the Journal of Democracy in 2023, is that a certain authoritarianism is not incidental to the Indian constitutional system but embedded within it. The architecture of executive supremacy, the hedging of fundamental rights with state-overriding exceptions, the bureaucratic centralism inherited from the Government of India Act 1935, the emergency powers that suspend the constitutional order without removing it, these are not bugs that crept in through misuse. They are features that were built in by design. And the question that follows from this recognition is not how to tweak the features but whether the design itself needs to be abandoned.

II. The Doctrine of Constitutional Autogenocide

There is a concept in comparative constitutionalism that scholars have begun to call constitutional autogenocide, a term borrowed from the Greek for self-killing. It refers to the process by which a constitutional order consumes its own foundational values through the legitimate use of its own procedures. The Constitution of India is a textbook case of this phenomenon. Its foundational values, as declared in the Preamble, are justice, liberty, equality, and fraternity. Its operational reality, as documented by every major international democracy index from 2021 to 2026, is the systematic suppression of each of these values through entirely constitutional means.

Justice has been made unavailable to the poor through a court system so expensive, so slow, so procedurally labyrinthine, and so culturally alien to ordinary Indians that accessing it requires either money or connections that most citizens do not have. The Constitutional right to approach the Supreme Court under Article 32 exists in text but not in practice for hundreds of millions of

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people who cannot afford the journey to New Delhi, let alone the fees of the advocates who practice before it. The Supreme Court itself, in case after case from 2024 to 2025 involving algorithmic governance, biometric surveillance, and the Aadhaar architecture, has struggled to apply constitutional tools to forms of state power that the framers never imagined, tools that concentrate surveillance power in the executive without any meaningful legislative or judicial oversight.

Liberty has been murdered through the expansion of preventive detention, through the Unlawful Activities Prevention Act that operates without meaningful constitutional safeguards, through the National Security Act, through the Foreign Contribution Regulation Act that has been weaponized against civil society, through sedition that was renamed but not abolished under the Bharatiya Nyaya Sanhita of 2023, through the IT Act provisions that criminalize speech, and through what Freedom House documented in its 2025 India report as the routine invocation of colonial-era laws to penalize perceived criticism of the government. The architecture of repression is not unconstitutional. It is built into the constitutional system. Article 19, which guarantees freedom of speech and expression, is immediately followed by Article 19(2), which authorizes the state to restrict that freedom on grounds so vague and capacious that almost any speech restriction can be justified under them.

Equality has been constitutionally betrayed not only through the persistence of caste discrimination, which the Constitution prohibits but the legal system has failed to eradicate, but through the systematic use of constitutional mechanisms to redistribute power upward rather than downward. The Directive Principles that were supposed to guide the state toward economic democracy have been treated as non-justiciable wishes rather than binding obligations. The promise of land reform was hollowed out through the Ninth Schedule, which was used to protect land legislation not from landlord challenge but to give political cover to tokenistic reforms that left the agrarian structure essentially untouched. The promise of equal pay, of the right to work, of the right to education, of the right to health, remain either aspirational or so inadequately implemented as to constitute a form of constitutional fraud.

Fraternity, the most undertheorized of the Preamble's four promises, has been the most completely betrayed. The constitutional project of building a fraternal community of equal citizens, a vision Ambedkar held with particular intensity, has collapsed before the combined forces of caste hierarchy, religious communalism, linguistic nationalism, and the majoritarian Hindu nationalism that became the explicit governing ideology of the state after 2014 and intensified through 2025. The V-Dem Institute's classification of India as an electoral autocracy in 2021, confirmed and deepened in every subsequent report through 2025, reflects not merely the practices of a particular government but the constitutional architecture that makes those practices possible.

III. The One Hundred and Six Amendment Catastrophe

As of March 2026, the Constitution of India has been amended one hundred and six times. This is the most amended major constitutional document in the democratic world. The frequency of amendment, roughly twice a year across the Constitution's history, has been celebrated by some

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commentators as evidence of the document's flexibility and responsiveness to changing conditions. This celebration is deeply misleading and deserves rigorous critical examination.

In a constitutional democracy, constitutional amendments are supposed to be extraordinary events. They are supposed to reflect profound shifts in the understanding of fundamental rights, the reorganization of governmental power, or the correction of structural injustices so serious that ordinary legislation cannot address them. The constitutional amendment process is designed to be more demanding than ordinary legislation precisely because the Constitution is supposed to represent something more durable, more fundamental, and more carefully deliberated than the political preferences of the party in power at any given moment.

The Indian amendment record tells a very different story. Many of the one hundred and six amendments were not corrections of profound injustice but political conveniences. Some were used to override Supreme Court judgments that inconvenienced the government of the day. The First Amendment of 1951 is the paradigm case: enacted within a year of the Constitution coming into force, it was used to restrict fundamental rights that the Supreme Court had only just begun to interpret generously, and it introduced the Ninth Schedule as a mechanism to place land reform legislation beyond judicial review, a device that was subsequently abused to protect hundreds of laws that had nothing to do with land reform from constitutional challenge.

Other amendments were used to extend the political life of particular arrangements. The Forty-Second Amendment of 1976, enacted during the Emergency, was the most egregious exercise in constitutional self-service in Indian history. It attempted to limit the power of courts to review constitutional amendments, to extend the life of the Lok Sabha from five to six years, to introduce a chapter on Fundamental Duties that mimicked Soviet constitutional forms without their egalitarian content, and to so extensively modify the constitutional framework that critics called it a "mini-constitution" enacted without any popular mandate.

Still other amendments have been nakedly partisan operations dressed in constitutional clothing. The Constitution (One Hundred and Twenty-Ninth Amendment) Bill of 2024, which seeks to facilitate simultaneous elections for the Lok Sabha and State Assemblies, is the most recent and one of the most constitutionally alarming examples. The argument advanced for simultaneous elections is superficially about administrative efficiency and cost reduction. But the deeper constitutional consequence is the homogenization of the electoral cycle in a way that would disadvantage regional parties, entrench the national party that commands the most resources, and fundamentally alter the balance of power between the center and the states in ways that the formal federalist provisions of the Constitution are supposed to prohibit.

The pattern that emerges from one hundred and six amendments is not a story of constitutional evolution guided by democratic deliberation and jurisprudential wisdom. It is a story of constitutional capture by the executive, in which the amending power has been used systematically to subordinate the other branches of government, to override judicial decisions that inconvenienced the powerful, to concentrate power at the center, and to insulate government action from constitutional accountability. The Constitution has not evolved toward greater justice and democracy through amendment. It has evolved toward greater executive supremacy and institutional subservience.

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IV. The Intellectual Bankruptcy of Piecemeal Reform

In the academic and policy discourse around Indian constitutionalism, the dominant response to the problems catalogued above has been the advocacy of piecemeal reform. Fix Article 356. Strengthen the Election Commission. Enhance judicial accountability. Create a constitutional court. Revise the Tenth Schedule to make anti-defection law fairer. Reform the criminal justice system. Amend the Representation of the People Act. These proposals are individually defensible and some of them are urgently necessary. But they share a fundamental intellectual inadequacy: they treat the symptoms of a systemic disease as if they were discrete and independent ailments susceptible to isolated cures.

The problem is not Article 356 in isolation. The problem is the entire federal architecture of the Constitution, which distributes power in a way that is formally federal but operationally unitary, which gives the center not merely constitutional supremacy but the capacity to administratively, financially, and politically subordinate state governments to the point of effective dependence. No amendment to Article 356 alone can repair this architecture without a fundamental rethinking of the entire chapter on center-state relations, the financial arrangements under the Finance Commission, the role of the Governor, the Concurrent List, and the residuary powers.

The problem is not the specific wording of Article 19(2) restrictions on free speech. The problem is the broader constitutional philosophy that treats citizens as subjects to be governed rather than sovereign individuals whose rights constrain government power. This philosophy pervades the entire fundamental rights chapter, which grants rights but immediately qualifies them, which provides writs but places them in a judicial system of limited access, which prohibits discrimination but does so in a framework that has systematically failed to dismantle the structural conditions of discrimination. No targeted amendment to Article 19 can cure this without a reconceptualization of the entire relationship between the state and the citizen.

The problem is not simply that courts are slow or understaffed. The problem is that the judicial system is designed around an adversarial, English common law model that is alien to the cultural and economic realities of most Indian citizens, that its procedures require professional legal representation that most citizens cannot afford, that its location in urban centers creates geographical barriers to access, and that its historical operation has reflected the class biases of a legal profession trained in and deeply attached to colonial jurisprudence. No administrative reform of court infrastructure can cure these problems without a fundamental rethinking of what justice means in the Indian context and how a constitutional order should secure it.

What is required is not the repair of individual provisions but the reimagination of the entire constitutional project. This is not a modest claim. It is not one that can be advanced without acknowledging the deep disruption it would cause, the political resistance it would face, and the institutional dangers of a constitutional transition. But intellectual honesty demands that we acknowledge the scale of the problem before proposing its solution. And the scale of the problem, as this part will document in the chapters that follow, is the scale of the entire constitutional order.

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CHAPTER TWO

THE COLONIAL DNA OF THE INDIAN CONSTITUTION: THE FINAL AUTOPSY

I. The Government of India Act 1935 and Its Living Legacy

The most important fact about the Constitution of India that is systematically suppressed in its celebratory accounts is that a very large proportion of its text was not written by the Constituent Assembly at all. It was lifted, virtually verbatim in many places, from the Government of India Act 1935, a statute enacted by the British Parliament to govern its Indian colony. The relationship between the two documents is not one of inspiration or selective borrowing. It is one of direct transplantation of colonial governance structures into the constitutional framework of an independent republic.

The Government of India Act 1935 was itself not a document created to serve Indian interests. It was, in the words of Winston Churchill, who opposed it as too generous to Indians, a device to maintain British control while appearing to share power. The Act created a system of provincial autonomy while reserving the most important powers, defense, foreign affairs, monetary policy, and the authority to override provincial legislation, in the hands of the Viceroy who remained accountable not to any Indian electorate but to the British Crown and Parliament. The elected provincial governments under the Act operated within this framework of constrained sovereignty, always subject to the overriding authority of a colonial center.

When the Constituent Assembly borrowed from this document, it did not merely borrow its procedural machinery. It borrowed its political philosophy. The Constitution's centralist design, the extensive Concurrent List, the residuary powers vested in the Union rather than the states, the emergency provisions, the Governor's role in state politics, the financial dependence of states on the center, all of these reflect the colonial logic of the 1935 Act. The center in the Indian Constitution, like the Viceroy in the 1935 Act, holds the ultimate authority to override, dissolve, dismiss, and control. The difference is that in the colonial system this was openly acknowledged as the prerogative of an imperial power. In the constitutional system it is disguised under the language of federalism, parliamentary democracy, and constitutional supremacy.

The scholar Anil Kalhan, whose foundational work on constitutional and extraconstitutional colonial emergency regimes has been extended by more recent scholars writing through 2024 and 2025, demonstrated that the Indian Constitution's emergency provisions were directly descended from the colonial emergency regime of the Government of India Act 1935 and the various ordinance and detention powers that the colonial state had accumulated for the purposes of suppressing nationalist agitation. These provisions, Articles 352, 356, 360, and the various detention powers authorized under Article 22, were not redesigned to serve the purposes of a democratic republic. They were transplanted into the republican framework with only cosmetic modifications, and their colonial logic, the logic of a state that fears its own population, remained intact.

This matters enormously for understanding why the Indian state has so consistently used these provisions against its own citizens rather than against external threats. The Emergency of 1975 to

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1977, the use of President's Rule in states governed by opposition parties more than one hundred times since independence, the detention of political opponents, the suppression of trade unions, the use of preventive detention against journalists and activists, none of these represent the perversion of a democratic constitutional order. They represent the activation of colonial mechanisms that were always present in the constitutional DNA, waiting for a political moment when the incumbent power decided that the costs of tolerating opposition or dissent were higher than the costs of suppressing them.

II. The Bureaucratic Inheritance and the Continuity of Colonial Administration

Alongside the constitutional structures, the British left behind an administrative apparatus that was explicitly designed for colonial extraction and control, and the Constitution of India not only failed to dismantle this apparatus but gave it constitutional protection. The Indian Administrative Service, the successor to the Indian Civil Service that Macaulay designed in 1854 to staff the colonial government with a small elite of generalist administrators trained at Oxford and Cambridge, is constitutionally entrenched under Article 312, which authorizes Parliament to create All India Services whose members can be deployed in both the Union and the states.

The philosophical foundation of the ICS was explicitly anti-democratic. Macaulay's argument for a professional civil service recruited through competitive examination was not an argument for democratic administration. It was an argument for the replacement of the corrupt patronage networks of the East India Company with a meritocratic elite that would be more efficient in governing a subject population. The ICS was designed to be insulated from political pressure, not because political accountability was valued but because the political sentiment of the Indian population was hostile to colonial rule and the administrators needed to be protected from it.

The IAS inherited this structure and this philosophy. Its generalist training, its cadre system, its all-India mobility, its relative insulation from state-level political accountability, all reflect the colonial logic of an administrative corps that serves the state rather than the governed. The Constitution gave this corps constitutional protection, making it extremely difficult for elected state governments to hold their own administrators accountable, creating systematic tensions between political authority and bureaucratic autonomy, and ensuring that the administrative culture of control and extraction that characterized colonial governance was reproduced under the republican system.

The consequences for ordinary citizens have been thoroughly documented by sociologists, political scientists, and public administration scholars. The Indian bureaucracy, as researchers through 2025 have repeatedly demonstrated, is among the world's least efficient, most corrupt, and most citizen-hostile administrative systems in proportion to the resources available to it. Not because its individual members are unusually venal, though corruption is endemic, but because the system within which they operate rewards hierarchy, risk-aversion, rule-compliance, and political connectivity rather than service delivery, innovation, or accountability to the people affected by administrative decisions.

The constitutional protection of the IAS and the Police Services, the latter also constitutionally recognized as an All India Service, has created a situation in which the most powerful

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instruments of state power over ordinary citizens, the administrators who control welfare delivery, the police who control physical security, are the least accountable to democratic oversight. State governments cannot effectively discipline IAS officers who belong to the center's cadre. Citizens cannot effectively challenge police action through mechanisms that are fast, affordable, and reliably impartial. The colonial logic of bureaucratic insulation from the governed has been constitutionally perpetuated.

III. The Police System and Its Constitutional Authorization of Violence

No dimension of the colonial inheritance is more directly violent in its impact on ordinary Indians than the police system. The Indian Police Act 1861, enacted after the Rebellion of 1857 to create a paramilitary force capable of suppressing mass anti-colonial resistance, remains the governing statute for most of India's state police forces. The 1861 Act was explicitly designed to make the police accountable upward to the colonial executive rather than downward to the policed community. Its structure concentrated command in the hands of officers who were accountable to the district administration, which was itself accountable to the colonial government rather than to any elected body or judicial authority.

The Constitution of India could have mandated the replacement of this colonial police architecture with a system genuinely designed to serve and protect citizens rather than to control and suppress them. It did not. The Police Act 1861 survived independence. Numerous commissions, including the National Police Commission of 1977 to 1981, the Ribeiro Committee of 1998, and the Padmanabhaiah Committee of 2000, recommended fundamental reforms. All were substantially ignored. The Supreme Court's landmark judgment in Prakash Singh v. Union of India in 2006 directed specific police reforms including the creation of State Security Commissions, Police Establishment Boards, and Police Complaints Authorities. By 2024, the majority of states had not implemented these directions in any meaningful way, and the court's ability to compel compliance has remained severely limited.

What the constitutional system has therefore perpetuated is a police force that operates with colonial assumptions of authority over citizens, colonial tools of physical coercion, colonial immunity from accountability, and colonial psychology toward the communities it polices. The UAPA, the NSA, the various state-level public security acts, have given this colonial police apparatus new legislative armor. The constitutional provisions on preventive detention under Article 22, borrowed directly from the colonial emergency framework, provide the legal foundation for detention without trial that the police routinely use against political opponents, labor organizers, journalists, farmers, students, and members of religious and ethnic minorities.

The toll of this system on ordinary Indians is incalculable but partially measurable. Custodial deaths continue to be reported in significant numbers year after year. Encounter killings, extrajudicial executions carried out by police with official sanction, have been used systematically in states like Uttar Pradesh after 2017 and described by the state government as law enforcement rather than murder. The UAPA has been used to imprison journalists, academics, and activists for years without trial. The Bhima Koregaon arrests, in which sixteen prominent civil society figures were detained under the UAPA in 2018 and 2020, many of whom remained imprisoned through 2024 and 2025, represent the constitutional system's most visible

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recent deployment of colonial policing logic against the very communities and individuals most committed to constitutional democracy.

The connection between the colonial DNA of the police system and the constitutional framework is not metaphorical. It is direct. The Constitution authorizes preventive detention. The Constitution has been interpreted as permitting the broad anti-terrorism and anti-sedition legislation that has become the primary tool of political policing. The fundamental rights guarantees of Articles 20, 21, and 22 are hedged with exceptions that the state has consistently interpreted in favor of its own power to detain, surveil, and punish. The result is a constitutional system that proclaims the right to life and personal liberty while authorizing the administrative architecture of its routine denial.

IV. The Language of the Constitution and Its Social Violence

A dimension of the colonial inheritance that receives insufficient constitutional attention is the language in which the Constitution was drafted and in which law continues to operate. The Constitution of India was written primarily in English, the language of the colonial power, which at independence was the mother tongue of an infinitesimally small fraction of the population. The decision to use English as the constitutional language was not merely a practical accommodation to the diversity of Indian languages. It was a political choice that replicated the colonial division between those who had access to the language of power and those who did not.

The implications of this choice have been profound and durable. Constitutional rights, however powerfully worded, are only meaningful to people who understand them, who can read the document in which they are proclaimed, and who can engage with the legal system that purports to enforce them. The vast majority of Indians do not read English. The constitutional project of citizen sovereignty, of "We, the People," is fundamentally compromised when the constitutional text itself is inaccessible to most of the people it claims to empower.

The translation of the Constitution into Hindi and other Indian languages, while symbolically significant, has not solved this problem. The Constitution has been translated into numerous Indian languages, including Maithili in 2024 and Kashmiri in November 2025. But the operative legal system continues to function in English. Supreme Court judgments are written in English. Most High Court proceedings are conducted in English. The professional legal culture that mediates between ordinary citizens and constitutional rights is overwhelmingly English-speaking. The gap between the constitutional text and the citizen's lived experience of constitutional rights is, at one level, a gap produced by colonial language policy that the Constitution perpetuated rather than dismantled.

This is not merely a matter of linguistic sentiment. It is a matter of democratic substance. A democracy in which the legal framework governing rights and obligations is comprehensible only to those with access to elite English-medium education is a democracy that structurally disadvantages the poor, the rural, the lower-caste, and the women who constitute the majority of the population. The colonial logic of governance through an educated elite that mediates between power and people is reproduced through the linguistic structure of the constitutional legal system.

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CHAPTER THREE

THE ARCHITECTURE OF EXECUTIVE SUPREMACY AND ITS SYSTEMATIC DESTRUCTION OF DEMOCRATIC NORMS

I. The Constitutional Design of Executive Concentration

The designers of the Indian Constitution made a deliberate and consequential choice to concentrate governmental power in the executive branch. This concentration was not accidental, not a product of drafting oversight, and not subsequently imposed through constitutional distortion. It was built into the original design with conscious intent, justified at the time by the perceived necessities of national integration and developmental planning, and it has operated to make Indian democracy substantially more executive-centered than any of its proclaimed democratic inspirations.

The Constitution empowers the executive in multiple overlapping ways that, taken together, create a system of legal executive supremacy that is qualitatively different from most constitutional democracies. Article 123 empowers the President, acting on the advice of the Council of Ministers, to promulgate ordinances when Parliament is not in session. This power has been used with such frequency and in such constitutionally questionable ways that it has effectively created a parallel legislative process that bypasses parliamentary deliberation. Between 2014 and 2024, the executive's use of the ordinance route to enact legislation without parliamentary scrutiny reached levels that constitutional scholars described as systematic legislative fraud, with ordinances being promulgated, allowed to lapse without being converted into legislation, and then re-promulgated in sequences that indefinitely avoided parliamentary accountability.

Article 86 allows the executive to determine when Parliament is summoned or prorogued, as long as six months do not elapse between sessions. This power, borrowed directly from the colonial Government of India Act's arrangement for the Viceroy, means that the government of the day can minimize parliamentary scrutiny by restricting the number and duration of sessions. The reduction in parliamentary sitting days over the decades since independence has been dramatic and consistent, with the 2025 parliamentary session among the shortest in absolute terms despite the volume and complexity of legislation being passed.

Article 74 makes the President act on the aid and advice of the Council of Ministers, effectively making the President a constitutional cipher and concentrating real executive power in the Prime Minister and cabinet. The President's discretionary powers, which exist in theory as checks on executive overreach, have in practice almost never been used to discipline an overreaching executive, and the political mechanisms for selecting the President have ensured that the office is typically filled by someone loyal to the ruling coalition. The President's role as constitutional guardian is thus largely fictive in conditions of single-party executive dominance.

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The concentration of power in the Prime Minister's Office, the PMO, has accelerated dramatically from the 1980s onward and reached new heights in the period from 2014 to 2026. The PMO has emerged as a super-ministry that exercises not merely coordination but direct control over the operations of most government departments, effectively bypassing both the cabinet system and the parliamentary accountability mechanisms that are supposed to constrain executive decision-making. This concentration has no specific constitutional authorization. It has evolved through practice and political power, enabled by constitutional provisions that vest power in "the Council of Ministers" without specifying the internal power relations of that body.

II. The Governors and the Colonial Logic of Article 356

No provision of the Indian Constitution has been more systematically abused, more thoroughly analyzed, and less effectively reformed than Article 356, the President's Rule provision. Under Article 356, if the President, acting on the advice of the Union cabinet, is satisfied that the government of a State cannot be carried on in accordance with the provisions of the Constitution, the President may assume to himself all or any of the functions of the Government of the State. The provision was derived from the colonial Government of India Act's provision for the suspension of provincial autonomy, and its language retained the colonial executive's presumption of superior judgment about the fitness of subordinate governments.

The use of Article 356 is one of the most thoroughly documented examples of constitutional provision being deployed as a political weapon. It has been invoked more than one hundred times since 1950. Political scientists studying the pattern of its invocations have consistently found that it has been used overwhelmingly against state governments controlled by parties opposed to the ruling party at the center, that it has been used at moments of political vulnerability for the central government rather than in response to genuine constitutional breakdown in the states, and that its use has tracked the partisan interests of the incumbent Union government with a correlation that makes the constitutional justification essentially fictive.

The Supreme Court's judgment in S.R. Bommai v. Union of India in 1994 attempted to constitutionalize constraints on Article 356, requiring that the imposition of President's Rule be subject to judicial review and that it be capable of being annulled by Parliament. This judgment was widely celebrated as a constitutional breakthrough. But its practical effect on the abuse of Article 356 has been limited. Governments have found ways to politically engineer the conditions that justify the invocation, using the Governor as an instrument of political destabilization. The Governor's role as the constitutional representative of the President in each state, filled by political appointees whose loyalty is to the Union government rather than to any constitutional obligation, makes them ideal instruments of center-state political warfare.

The Governors of India are perhaps the purest example of the colonial logic embedded in the constitutional framework. Their role maps almost exactly onto the colonial-era Governors who administered the provinces under the Government of India Act 1935, reporting to the Viceroy rather than being accountable to the provincial legislature. The Constitutional Governors are appointed by the President, meaning in practice by the Union government, they serve at the pleasure of the Union government, they report to the President, meaning again the Union

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government, and their discretionary powers can be exercised in ways that systematically disadvantage state governments that are politically inconvenient to the center.

The controversies over Gubernatorial behavior that erupted with particular intensity from 2022 to 2025, involving the Governors of Kerala, Tamil Nadu, West Bengal, Jharkhand, and Punjab among others, revealed the constitutional system's fundamental inability to police this form of political executive manipulation. Governors refusing to summon assemblies, delaying assent to state legislation, making public speeches critical of their own state governments, summoning leaders to form governments in circumstances of political controversy, all constitute constitutional violations in spirit if not always in letter. The Supreme Court has made increasingly pointed observations about Gubernatorial overreach, but the remedies available to it are limited by the constitutional architecture that created the problem in the first place.

III. Money and Power: The Financial Constitution and Its Centralizing Logic

The financial architecture of the Indian Constitution is the most systematic and least discussed mechanism of centralized power. The allocation of tax revenues between the Union and the states, the grants-in-aid provisions, the role of the Finance Commission, and the conditions attached to central transfers all combine to create a situation in which state governments, even those with large populations, significant administrative responsibilities, and genuine development needs, are financially dependent on the central government to an extent that systematically compromises their constitutional autonomy.

The Seventh Schedule of the Constitution, which distributes legislative powers between the Union, the states, and the Concurrent List, assigns the most lucrative tax bases to the Union. Income tax on non-agricultural income, corporate tax, customs duties, and excise duties on manufactured goods were all originally Union subjects. The States were left with land revenue, which in an era of declining agriculture's share of GDP generates ever-smaller proportions of state expenditure needs, along with taxes on agricultural income and certain smaller levies. The introduction of the Goods and Services Tax through the One Hundred and First Amendment of 2016 further centralized the most economically significant indirect tax, with states being compensated through a formula that has been the subject of intense political controversy, particularly when the promised compensation was withheld or reduced during the COVID-19 economic disruption of 2020 to 2022.

The Finance Commission, which is constitutionally mandated to recommend the principles governing the distribution of tax revenues between the Union and the states, operates in conditions that systematically favor the center. Its members are appointed by the President, meaning the Union government. Its recommendations are advisory rather than binding on the Union government, which retains the power to modify or reject them. The formula it uses to distribute revenues has been a subject of persistent controversy among state governments that argue that the formula systematically disadvantages states that have achieved better development outcomes, penalizing educational achievement and lower fertility in ways that are constitutionally indefensible.

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The centrally sponsored schemes, through which the Union government transfers funds to states for specific programs with conditions attached, have grown to represent a very large proportion of social sector spending and have become a mechanism through which the center effectively controls state-level policy-making in areas that are constitutionally state subjects. Education, health, rural development, and agriculture are all State List subjects, but centrally sponsored schemes allow the center to set national priorities, impose administrative conditions, require state co-financing, and evaluate performance according to centrally determined criteria in ways that effectively override state autonomy in practice while formally respecting it on paper.

This financial architecture has implications that go far beyond the technical question of fiscal federalism. It means that no state government, regardless of how good its governance, how competent its administration, or how clear its development vision, can fully implement its own constitutional responsibilities without central financial cooperation. The leverage this gives the center over states is enormous and has been systematically used for political purposes. States governed by opposition parties have found their development projects delayed, their central fund allocations cut, their requests for special status or additional grants rejected, and their finance ministers marginalized in national economic policy deliberations.

IV. The Weaponization of Institutions: CBI, ED, and the Architecture of Selective Prosecution

One of the most significant and constitutionally troubling developments of the period from 2014 to 2026 has been the systematic use of central investigative agencies, particularly the Central Bureau of Investigation and the Enforcement Directorate, as instruments of political persecution. This weaponization is not a new phenomenon. The Supreme Court's description of the CBI as a "caged parrot" in 2013, speaking at its master's voice, acknowledged a problem that had been building for decades. But the scale, systematicity, and brazenness of the political use of investigative agencies after 2014 represented a qualitative escalation that has become one of the defining features of Indian constitutional governance in this period.

The constitutional problem with the CBI and ED is structural. Both agencies are creations of executive power rather than independent constitutional bodies. The CBI was created by executive order under the Delhi Special Police Establishment Act 1946, another colonial-era statute. The ED was created under the Foreign Exchange Management Act and the Prevention of Money Laundering Act. Neither agency has constitutional independence comparable to that of the Election Commission, the Comptroller and Auditor General, or the Judiciary. Both are headed by officers appointed by the executive, supervised by the executive, and funded by the executive. Their operational independence from political direction is entirely dependent on the personal integrity of their officers and the political restraint of the government of the day, neither of which can be constitutionally guaranteed.

The pattern of selective prosecution that has characterized these agencies in the period under review is difficult to explain on any basis other than political motivation. Opposition politicians facing serious corruption allegations in some states have been investigated with extraordinary vigor immediately before crossing the floor to join the ruling coalition, after which investigations have been suspended or closed. Civil society organizations critical of government policy have

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faced sustained FCRA investigations and fund freezes. Journalists whose reporting is inconvenient to the government have faced tax raids and money laundering inquiries. Academics, lawyers, and activists associated with civil liberties causes have been prosecuted under the UAPA.

The Supreme Court has expressed discomfort with several specific instances of this pattern. In 2024 and 2025, various benches made pointed observations about the delay in granting bail to long-term UAPA detainees, about the conditions of detention, and about the evidentiary standards being applied in politically sensitive cases. But the court's ability to address the systemic problem, the constitutional absence of institutional independence for investigative agencies, has been constrained by both doctrinal limitations and the court's own complex relationship with the executive during this period.

CHAPTER FOUR

CONSTITUTIONAL LAW AS WEAPON: THE SYSTEMATIC VICTIMIZATION OF THE GOVERNED

I. The Inversion of Constitutional Purpose

A constitution, in the liberal democratic tradition that India formally adopted as its governing philosophy, exists to constrain state power in the interest of individual rights and collective self-government. It is a document that subjects the government to the law rather than subjects the citizen to the government. This foundational purpose has been systematically inverted in the operational reality of Indian constitutionalism. The Constitution and the elaborate legal structure built upon it have been used, repeatedly and systematically, as instruments of state power against the very people whose sovereignty the document proclaims.

This inversion operates at multiple levels and through multiple mechanisms. At the most fundamental level, the structure of the fundamental rights chapter, as analyzed by political scientist Tripurdaman Singh and legal scholar Tarunabh Khaitan among others, places the rights of citizens in a relationship of permanent vulnerability to state power. Every right in Part III of the Constitution is accompanied by limitations that allow the state to override it on grounds of public order, morality, national security, or the requirements of the Scheduled Tribes and Scheduled Castes, among other justifications. The language of these limitations is sufficiently vague and capacious to justify almost any restriction on almost any right in almost any circumstances if the political will to impose it exists.

The judicial doctrine of "reasonable restrictions" that has developed around Article 19 is a case study in this problem. The constitutional text requires that restrictions on fundamental rights be "reasonable." But the determination of what is reasonable has been made primarily by courts that have historically shown enormous deference to state claims about security and public order, that have operated from an institutional position of structural proximity to the executive, and that have rarely had to personally experience the consequences of the restrictions they are evaluating.

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The result is a "reasonable restrictions" jurisprudence that has authorized a vast repertoire of state restrictions on speech, assembly, movement, and association that would be constitutionally impermissible in most genuine liberal democracies.

II. Sedition, Its Children, and the Constitutional Persecution of Dissent

The story of sedition law in India is a perfect illustration of how constitutional law becomes a weapon. Section 124A of the Indian Penal Code, the colonial sedition provision that punished "exciting disaffection towards the Government," was inherited by independent India from the colonial legal system that used it to prosecute Bal Gangadhar Tilak in 1897 and 1908 and to charge Mahatma Gandhi in 1922. Gandhi, defending himself at his trial, called it "the prince of political sections in the IPC designed to suppress the liberty of the citizen." The founders of the Republic kept this provision in their new legal system.

The Supreme Court in Kedar Nath Singh v. State of Bihar in 1962 upheld the constitutional validity of sedition with a narrowing construction that restricted its application to speech that incites violence or public disorder. But the narrowing construction was never effectively enforced at the level of actual prosecutions. Police and lower courts continued to register sedition cases against journalists, students, farmers, and activists whose speech had no connection to violence or disorder. The number of sedition cases filed between 2010 and 2022 increased dramatically even as conviction rates remained extraordinarily low, suggesting that the provision was being used for its chilling effect and its capacity to harass and detain rather than for any genuine security purpose.

In 2022, the Supreme Court placed sedition under constitutional review. The government's response was not to await the Supreme Court's judgment but to replace sedition with a provision under the newly enacted Bharatiya Nyaya Sanhita of 2023, which Freedom House's 2025 report described as effectively the same as the colonial-era law. The new provision, which punishes "acts endangering sovereignty, unity and integrity of India," is at least as vague as the original sedition provision and arguably broader, creating concerns that the renaming is a constitutional shell game rather than a genuine reform.

Alongside sedition, the UAPA has become the primary instrument of constitutional persecution of dissent. The UAPA was amended in 2019 to allow individuals, not just organizations, to be designated as terrorists, without any judicial pre-confirmation, without any specified evidentiary standard, and without any automatic review mechanism. Once designated, a person can be arrested and held without bail for extended periods. The bail provision of the UAPA, which requires the court to be satisfied that there are reasonable grounds for believing that the accusation is prima facie true before granting bail, effectively reverses the presumption of innocence that is fundamental to any fair criminal justice system.

The Bhima Koregaon cases, in which a set of civil rights activists, academics, lawyers, and journalists were arrested between 2018 and 2020 under the UAPA on charges of conspiring to assassinate the Prime Minister, became the most emblematic example of constitutional law as persecution. The evidence presented by the prosecution has been contested by defense lawyers and independent forensic analysts who have raised serious questions about the authenticity of

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documents found on defendants' devices. Several defendants spent years in pre-trial detention in conditions that amounted to punishment before any conviction. Father Stan Swamy, an 83-year-old Jesuit priest and tribal rights activist who suffered from Parkinson's disease, died in judicial custody in July 2021 while his bail application was pending. His case crystallized for many constitutional scholars and civil society activists the lethal potential of the constitutional law as weapon.

III. The Weaponization of Agrarian Law: Land Acquisition and Constitutional Betrayal

No dimension of constitutional victimization has been more widespread, more brutal in its material consequences, or more thoroughly documented than the use of land acquisition powers against India's rural and tribal populations. The Constitution's framework for land acquisition is built around the concept of "public purpose," which permits the state to compulsorily acquire private land for public purposes with compensation. This framework, derived from the colonial Land Acquisition Act 1894, has been used throughout the post-independence period to displace tens of millions of people from their land in the name of development projects, dams, mines, highways, special economic zones, and industrial corridors.

The sociologist Walter Fernandes estimated that approximately 60 million people had been displaced by development projects in India between 1947 and 2000, with less than a third having received any meaningful rehabilitation. The tribal and Dalit communities most dependent on land and forest resources for their survival were displaced in disproportionate numbers. The constitutional framework permitted this displacement. The "public purpose" standard was interpreted so expansively by courts as to encompass virtually any project backed by the state. The compensation offered was typically based on registered land values that bore no relationship to the actual economic value of the land to its occupants, ignoring the commons, the forest rights, the water rights, and the livelihood assets that displacement destroyed.

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013, which replaced the colonial Land Acquisition Act 1894, was supposed to reform this system by requiring social impact assessments, consent from affected communities, and improved compensation. Its enactment was a significant step. But its implementation has been systematically undermined by state governments that have used exemption clauses, diluted the consent requirements, and failed to establish the institutional machinery that genuine implementation would require. Multiple state amendments to the 2013 Act have effectively restored the conditions of the 1894 Act in large parts of the country. The constitutional framework, which places land acquisition in the Concurrent List and allows states to modify central legislation, has enabled this systematic dilution.

The Forest Rights Act 2006, which recognized the rights of tribals and forest-dwelling communities to forest land and forest resources, represents one of the most significant constitutional advances for historically marginalized communities in the post-independence period. But its implementation has been even more consistently undermined than the Land Acquisition Act reform. A Supreme Court order in 2019, which was subsequently modified following a political storm, threatened the eviction of millions of tribal families whose forest rights claims had been rejected by administrative processes of deeply questionable fairness. The

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constitutional framework's failure to protect the Forest Rights Act from administrative subversion reflects the same pattern of constitutional promises being emptied by operational reality.

IV. Women, Constitutional Rights, and Institutional Violence

The Constitution of India guarantees equality before law and prohibits discrimination on grounds of sex in Article 15 and 16. The Directive Principles mandate equal pay for equal work and maternity relief. These provisions have been used to support important legislative and judicial advances for women's rights, including the Protection of Women from Domestic Violence Act 2005, the amendments to rape law following the 2012 Delhi gang rape case, the recognition of marital rape as a form of abuse in some judicial decisions, and the expansion of women's reservation in local government.

But the constitutional framework has also failed women in systematic and severe ways that reflect the continuity of patriarchal structures within and around the legal system. The failure to criminalize marital rape at the national level, despite judicial decisions in some states and sustained civil society advocacy, reflects the constitutional and legislative system's deference to traditional social norms at the expense of women's bodily autonomy. The gap between constitutional equality guarantees and the lived experience of women in India's patriarchal social system is documented in every available metric: gender-based violence, workplace discrimination, inheritance and property rights, educational access, and political representation all continue to reflect structural inequality that the constitutional framework has not been able to overcome.

The constitutional protection offered to religious personal laws creates a particularly acute conflict between equality guarantees and customary practices. Article 44's Directive Principle calling for a Uniform Civil Code has been one of the most politically contested provisions of the Constitution for decades. Its contested status reflects the complexity of balancing gender equality guarantees with religious freedom and cultural autonomy claims. But the practical consequence of this political deadlock is that women in communities governed by religious personal laws continue to face inferior legal status in marriage, divorce, inheritance, and guardianship that would be straightforwardly unconstitutional if applied as general law.

The Waqf Amendment Bill 2024, which reformed the governance of Muslim Waqf properties, became another arena in which the intersection of religious law, property rights, and constitutional principles generated intense controversy. Critics of the amendment argued that it interfered unconstitutionally with the religious affairs of the Muslim community. Supporters argued that it was necessary to address governance failures in Waqf administration that harmed the community's interests, particularly those of women and poorer community members. The constitutional framework's ambiguity about the extent of state authority over religious institutions created a controversy that illuminated the deep tensions in the Indian Constitution's approach to religious plurality and gender equality.

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CHAPTER FIVE

THE FEDERALISM FRAUD: HOW CONSTITUTIONAL CENTRALISM VICTIMIZES THE REGIONS AND THEIR PEOPLE

I. The Quasi-Federal Constitution and Its Unitary Gravitational Pull

The Indian Constitution is conventionally described by constitutional lawyers as "quasi-federal," a hybrid between federal and unitary systems. The term is technically accurate but politically evasive. The Convention of describing India's constitutional arrangement as quasi-federal normalizes what is in practice an arrangement that is profoundly biased toward central power and that has been used systematically to override the democratic choices of state electorates in ways that would be constitutionally impermissible in any genuine federal system.

The bias toward centralism is structural. The Seventh Schedule's distribution of legislative powers gives the Union an extensive list of exclusive powers, a Concurrent List in which Union law prevails in case of inconsistency, and a residuary power clause that assigns all subjects not enumerated in either list to the Union. The States have an exclusive list that contains many important subjects, but the political economy of governance, the financial architecture, and the emergency provisions all operate to reduce the practical significance of state-exclusive subjects.

The constitutional scholar Granville Austin's description of Indian federalism as "cooperative federalism" was aspirational rather than descriptive from the beginning, and has become increasingly inaccurate over time. Cooperative federalism requires that both levels of government have the fiscal and administrative capacity to operate effectively within their constitutional domains, that genuine mechanisms of inter-governmental coordination exist and function, and that the political culture of the intergovernmental relationship is one of partnership rather than subordination. All three conditions fail in the Indian case.

States lack fiscal independence. The coordination mechanisms, the Inter-State Council, the Finance Commission, the GST Council, have all shown varying degrees of political capture by the center. And the political culture of center-state relations has oscillated between the formal cooperative language of constitutional proclamation and the coercive political practice in which the center has consistently used its financial, administrative, and constitutional levers to discipline states that challenge its political authority.

II. Linguistic and Cultural Federalism: The Hindi Imposition Controversy

Among the most persistent and politically explosive dimensions of India's federalism failure is the question of linguistic pluralism and the constitutional status of India's many languages. The Constitution's Eighth Schedule recognizes twenty-two scheduled languages, and the Constitution's provisions on official language have been the subject of continuous political controversy since independence. But the constitutional framework has failed to resolve the fundamental tension between the aspiration to linguistic pluralism and the political project of national homogenization around Hindi as a unifying national language.

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The provisions of the Constitution relating to official language, Articles 343 to 351, establish Hindi as the official language of the Union while preserving English as a language of official use for a transitional period that was originally intended to end in 1965. The transitional period became permanent because of the intense political opposition from southern and northeastern states to the imposition of Hindi. But the constitutional accommodation has never fully resolved the underlying political conflict, and periodic attempts by the central government to expand the use of Hindi in official communication, civil service recruitment, and educational requirements have generated intense regional resistance.

The National Education Policy 2020's provisions on the three-language formula, which critics in Tamil Nadu and other states read as a renewed attempt to impose Hindi through educational policy, generated protests that reflected the depth of this continuing constitutional failure. The constitutional system's inability to resolve the language question reflects a broader failure: the Constitution's aspiration to national integration through cultural homogenization conflicts with its simultaneous aspiration to cultural pluralism, and this conflict has never been resolved because the constitutional text contains both aspirations without providing a principled mechanism for prioritizing one over the other in cases of conflict.

The linguistic rights of India's many minority language communities, those whose languages are not in the Eighth Schedule and not official languages of any state, represent an even more serious constitutional failure. Communities speaking Tulu, Bhojpuri, Bodo, Santali, and dozens of other languages have legitimate claims to constitutional recognition of their linguistic rights that the Constitution has not adequately accommodated. The constitutional framework's approach to linguistic diversity reflects the framers' assumption that the diversity of India's languages was a problem to be managed toward eventual national unity rather than a form of plural sovereignty to be constitutionally protected.

III. The Northeast: Constitutional Exclusion and Military Occupation

No region of India illustrates the failure of the constitutional federalism project more completely or more painfully than the northeastern states. The northeastern region, comprising what are now eight states, was incorporated into the Indian republic through processes that in several cases involved military force and political pressure rather than genuine democratic self-determination. The constitutional accommodations made for the region, the special provisions for Nagaland under Article 371A, for Mizoram under Article 371G, for Sikkim under Article 371F, and for various tribal areas under the Sixth Schedule, represent acknowledgments of the problematic terms of integration without providing genuine constitutional resolution of the political tensions those terms have generated.

The Armed Forces Special Powers Act, first enacted in 1958 for the northeastern region and subsequently extended to Jammu and Kashmir, represents the most extreme example of the Constitution being used to legalize military occupation of parts of India's own territory. The AFSPA gives members of the armed forces the power to shoot to kill on the basis of reasonable suspicion, to arrest without warrant, to enter and search premises without warrant, and to destroy property, with immunity from prosecution without prior sanction of the central government. This

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immunity has made the prosecution of security forces for extrajudicial killings, torture, rape, and other serious human rights violations virtually impossible.

The Supreme Court, in its 2016 judgment in Extra Judicial Execution Victim Families Association v. Union of India, held that even in areas where the AFSPA is in force, every death caused by the armed forces must be investigated and that the protection from prosecution cannot apply to cases of excessive force. But the practical implementation of this judgment has been extremely limited. The political and military resistance to accountability for actions taken under the AFSPA has proved stronger than the constitutional direction to investigate. The constitutional framework that authorized the AFSPA and that has been interpreted as permitting its continuation for decades beyond any possible emergency justification is a constitutional wound that has not healed and cannot heal within the current constitutional order.

The Manipur violence of 2023, which continued to simmer through 2024 and 2025, involving ethnic conflict between the Meitei and Kuki-Zo communities with documented failures of state protection and allegations of security force complicity, represented another crisis of constitutional governance in the northeast that the existing framework is structurally incapable of addressing. The constitutional system's response, including a brief visit by the Prime Minister, Supreme Court supervision of relief and rehabilitation, and continuing political controversy about the state government's handling, illustrated the gap between constitutional promise and governmental capacity in a region that has never been fully incorporated into the constitutional order on terms that its diverse peoples have genuinely accepted.

CHAPTER SIX

CORRUPTION, PATRONAGE, AND CONSTITUTIONAL PERMISSION: THE LEGAL ARCHITECTURE OF ELITE CAPTURE

I. Corruption as Constitutional Product

The relationship between the Indian constitutional system and endemic corruption is not coincidental. It is structural. The constitutional and legal framework that governs political finance, public contracting, bureaucratic discretion, and the regulation of economic activity creates conditions that are systematically favorable to corruption. It does so not because the drafters intended to create conditions for corruption, but because the constitutional choices made in 1950 created a system of concentrated power, limited accountability, insulated bureaucracy, and state-controlled economic allocation that is, across all comparative experience, deeply conducive to corruption.

The electoral bond system, introduced in 2017 and struck down by the Supreme Court in 2024 in Association for Democratic Reforms v. Union of India, was perhaps the most brazen legalization of political corruption in Indian constitutional history. Electoral bonds allowed unlimited and anonymous corporate donations to political parties through a mechanism that allowed the government of the day to know which corporations were donating to which parties while denying

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this information to the public and to the opposition. The Supreme Court's judgment striking down the scheme was constitutionally significant, but it left intact the underlying constitutional framework that allows unlimited corporate funding of political parties subject to weaker disclosure requirements.

The systematic relationship between political funding and government contracts, regulatory decisions, and legislative outcomes has been documented by scholars, journalists, and parliamentary investigations across the post-independence period. The absence of meaningful limits on electoral spending, the inadequate regulation of political finance, and the constitutional design of a system in which elected governments control enormous discretionary power over economic allocation all combine to create what political scientists call a "political market" in which economic power can be converted into political power and political power into economic advantage.

The constitutional framework's approach to corruption reflects a similar pattern to its approach to other governance failures: it creates anti-corruption institutions, the CBI, the CVC, state vigilance commissions, the Lokpal, without giving them the independence, the resources, the legal tools, or the political protection they need to operate effectively against powerful actors. The Lokpal and Lokayuktas Act 2013, which was supposed to create an independent anti-corruption ombudsman with powers to investigate even the Prime Minister, was enacted after a remarkable mass movement led by Anna Hazare in 2011. But the Lokpal was not fully operationalized until 2019, its powers have been limited by subsequent amendments, and its first investigation since being fully constituted revealed the extent to which it has become another institutional shell rather than a genuine anti-corruption mechanism.

II. Electoral Bonds, Political Finance, and the Corruption of Democracy

The Supreme Court's unanimous decision in the electoral bonds case in February 2024 was, in constitutional terms, one of the most significant judgments of the decade. The court struck down the scheme on the grounds that it violated the constitutional right to information about political funding, which it held to be part of the fundamental right to free expression under Article 19(1)(a), and that the scheme violated the right to equality because it enabled a quid pro quo between corporate donors and the government in power.

The constitutional analysis in the electoral bonds judgment is sophisticated and important. But the remedy, the striking down of the scheme and the direction to disclose past bond purchases, was inadequate to address the underlying structural problem. The constitutional framework that permits unlimited corporate donations to political parties, subject only to disclosure requirements, remains intact. The structure in which the political parties that control the government also control the regulatory and enforcement environment for the corporations that fund them remains intact. The deep constitutional ambiguity about the role of money in electoral democracy, about the right to equalize political participation, and about the corrupting effects of concentrated wealth on democratic governance, remains unresolved.

Comparative constitutional analysis suggests that the Indian Constitution's approach to political finance is among the most permissive in the democratic world. Most mature democracies have

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developed, through constitutional interpretation or legislation, systems of public funding of political parties, strict limits on private donations and electoral spending, and robust disclosure requirements, on the basis that unlimited private funding of politics is incompatible with genuine democratic equality. The Indian constitutional framework has not produced equivalent protections, and the Supreme Court's electoral bonds judgment, while important, does not create the constitutional foundation for genuine political finance reform.

III. The Tenth Schedule and the Constitutional Enablement of Political Defection

The Tenth Schedule of the Constitution, the anti-defection law introduced by the Fifty-Second Amendment of 1985, is one of the most constitutionally perverse provisions of the Indian constitutional order. Introduced to address the phenomenon of "Aaya Rams and Gaya Rams," legislators who defected between parties for personal gain, the Tenth Schedule has had the opposite of its intended effect. Rather than cleaning up political culture, it has transferred the corrupt incentives of individual defection to the level of wholesale party splitting, created perverse constitutional incentives for legislators to remain loyal to party leadership regardless of their constituency's interests, and become a mechanism through which ruling parties engineer defections at precisely the scale that is constitutionally protected.

The anti-defection law disqualifies legislators who vote against their party's direction or abstain when directed to vote. But it exempts from disqualification legislators who are part of a "merger" in which at least two-thirds of a party's legislative group merges with another party. This provision has been systematically exploited in state after state to engineer the collapse of opposition governments through the organized defection of two-thirds of their legislative members, with the defecting legislators being protected from disqualification by the merger exemption.

The constitutional controversies over anti-defection disqualifications that multiplied dramatically from 2019 to 2025, involving the Maharashtra government collapse in 2022, the Karnataka legislative crisis, the Goa Congress exodus, and numerous other state-level political upheavals, revealed the Tenth Schedule's fundamental constitutional incoherence. The provision that was supposed to prevent the corruption of individual legislators has instead created a framework that enables the wholesale purchase of legislative majorities by parties or interests with sufficient financial resources. The constitutional promise of stable and accountable democratic government has been perverted into a constitutional permission for the purchase of political power.

The Speaker's role in adjudicating disqualification petitions under the Tenth Schedule has become another site of constitutional failure. The Constitution assigns disqualification decisions to the Speaker, who is an elected member of the legislature chosen by the majority party and therefore rarely neutral in politically contested disqualification cases. The Supreme Court has, in a series of judgments from Kihoto Hollohan in 1992 through the Maharashtra cases of 2023 and 2024, attempted to define the limits of the Speaker's discretion and to establish time limits for disqualification decisions. These judicial interventions have not solved the fundamental constitutional problem: vesting quasi-judicial power over legislators' political survival in an officer who is politically elected by the majority whose interests are typically aligned with the outcome of the disqualification decision.

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CHAPTER SEVEN

THE NATIONALIST TURN: HOW CONSTITUTIONAL AMBIGUITY ENABLES AUTHORITARIAN MAJORITARIANISM

I. The Constitution and the Boundaries of National Identity

The Constitution of India establishes the nation as a "Sovereign Socialist Secular Democratic Republic." Each word of this description carries a history, a political contest, and an ambiguity. The addition of "Socialist" and "Secular" to the Preamble in 1976 by the Forty-Second Amendment, during the Emergency, was itself a controversial exercise of amending power. But even in its post-1976 form, the constitutional description of the nation leaves enough ambiguity about the meaning of "secular" and about the relationship between the state and religion to enable radically different constitutional readings.

The Indian conception of secularism, often described as "positive" or "principled" secularism to distinguish it from the strict separation of state and religion in the French tradition, holds that the state maintains equal distance from all religions and may engage with religious communities to promote social reform and protect individual rights within religious communities. This conception, which Justice Gajendragadkar articulated in his early secularism jurisprudence and which has been affirmed and elaborated in subsequent Supreme Court decisions including S.R. Bommai, Aruna Roy, and the election law cases, is genuinely pluralist and non-discriminatory in its theoretical formulation.

But the constitutional ambiguity about secularism's operational meaning has created space for a very different constitutional politics. The Hindutva cases of 1995, decided by a seven-judge bench of the Supreme Court, held that Hindutva is not merely a religion but a way of life and is not per se an appeal to religion in violation of electoral law. This judgment, which has been widely criticized by constitutional scholars and has never been fully reconsidered despite requests, created a constitutional permission for the political mobilization of Hindu cultural identity that subsequent political actors have exploited with systematic effectiveness.

The V-Dem Institute's classification of India as an electoral autocracy in 2021, and its characterization of India as one of the worst autocratizers in the world, reflects a broader global scholarly consensus that has grown sharper and more detailed through 2025. The academic study by Rina Agarwala published in the Annual Review of Sociology in 2025 and the study published in Asian Studies Review in mid-2025 examining India's democratic backsliding through the lens of political culture both identify the constitutional framework's accommodation of majoritarian nationalism as a structural factor enabling the current political direction, rather than merely an aberrational deviation from constitutional norms.

II. The Citizenship Amendment Act and the Constitutional Assault on Secularism

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The Citizenship Amendment Act 2019 (CAA) and the political controversy it generated through 2020, 2021, and continuing with its notification of implementing rules in 2024, represents the most constitutionally significant explicit challenge to the secular character of the Indian Constitution in the post-Emergency period. The CAA provides expedited citizenship to refugees from Pakistan, Bangladesh, and Afghanistan, but only for members of Hindu, Sikh, Jain, Buddhist, Parsi, and Christian communities. Muslims from these countries are explicitly excluded.

The constitutional challenge to the CAA under Article 14 (equality before law) and Article 15 (prohibition of discrimination on grounds of religion) raises questions about whether the citizenship framework can constitutionally make religion-based distinctions. The government's defense of the CAA relies on the argument that the excluded communities (Muslims from the specified countries) are not persecuted minorities but dominant majority communities, and therefore do not require protection. This argument has been found persuasive by some constitutional scholars and deeply unpersuasive by others.

The constitutional significance of the CAA controversy goes beyond the specific statutory question. The mass protests of 2019 and 2020, in which millions of Indians of all religions took to the streets against the CAA, represented the largest public mobilization in defense of constitutional secularism in independent India's history. The state's response to these protests, including the violence in Delhi in February 2020 that killed dozens of people and the subsequent prosecution of protest organizers under the UAPA rather than prosecution of those responsible for violence, illustrated the constitutional system's operational asymmetry: constitutional provisions protecting religious equality were being challenged while constitutional provisions enabling the suppression of those challenging it were being freely used.

The Supreme Court's handling of the CAA petitions, which remained pending through 2024 and had not been finally decided as of early 2026, has itself become a constitutional controversy. Critics argue that the court's delay in hearing and deciding constitutional challenges to legislation of this magnitude reflects an institutional deference to the executive that compromises its role as constitutional guardian. The pattern of constitutional petitions concerning politically sensitive legislation remaining in cold storage for extended periods while petitions of less political sensitivity are decided promptly has been documented by researchers and has contributed significantly to the erosion of public confidence in the Supreme Court's institutional independence.

III. Electoral Manipulation and the Subversion of Democratic Mandate

The constitutional framework of electoral democracy in India, while formally robust in its provisions for free and fair elections under the supervision of an independent Election Commission, has shown systematic vulnerabilities in the period under review. The 2025 electoral controversy emerging from the 2024 general elections, in which allegations of electoral fraud and the collusion of the Election Commission with the ruling BJP were widely reported, represents the most serious challenge to the credibility of Indian electoral democracy since the post-Emergency elections of 1977.

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The Election Commission of India is constitutionally established under Article 324 as an independent body. But its constitutional independence is compromised by the appointment process, which vests the power to appoint Election Commissioners in the President acting on the advice of the Union Cabinet. A committee of ministers recommends commissioners who are then nominally appointed by the President, in practice meaning the government appoints the referees of its own electoral performance. The Supreme Court in Anoop Baranwal v. Union of India in 2023 held that the appointment process should involve a committee that includes the Leader of the Opposition and the Chief Justice of India, addressing the most obvious conflict of interest. But the Parliament subsequently legislated to remove the Chief Justice from this committee, replacing her with a cabinet minister, creating a situation in which the government's nominees remain in a majority on the committee that selects election commissioners.

The Freedom House 2025 report on India noted the declining score of India's electoral process, citing deficiencies in the independence of the national election commission. The specific concerns raised included the ECI's perceived leniency in addressing violations of the Model Code of Conduct, including inflammatory speeches and misuse of religion in campaigning, with Prime Minister Modi's campaign speeches among those that drew complaint. The ECI's dismissal of complaints against the Prime Minister while taking swifter action against opposition complaints suggested a pattern of partisan operation that is constitutionally incompatible with the independence the institution is supposed to possess.

The constitutional framework contains no effective mechanism to address a situation in which the Election Commission itself becomes partisan. The judicial review of electoral matters is subject to extraordinary procedural complexity, with election petitions taking years to decide, by which time the political consequences of any electoral fraud have become irreversible. The constitutional promise of free and fair elections is therefore dependent on the institutional independence of the Election Commission, and when that independence is compromised, the constitutional promise becomes empty.

CHAPTER EIGHT

THE SOCIAL DEVASTATION: CASTE, CLASS, GENDER, AND THE CONSTITUTION'S BROKEN PROMISE TO THE MARGINALIZED

I. Caste and the Constitutional Paradox

The Constitution of India's approach to caste is its deepest and most unresolved paradox. The document abolishes untouchability in Article 17, prohibits caste-based discrimination in Articles 15 and 16, and simultaneously mandates affirmative action for Scheduled Castes and Scheduled Tribes in Article 15(4), 16(4), and the subsequent amendments that have extended and expanded these provisions. This approach, associated above all with the constitutional vision of B.R. Ambedkar, the Constitution's chief drafter and the most formidable intellectual opponent of caste oppression, attempts to use the state to simultaneously recognize the reality of caste oppression and move toward its elimination.

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The seventy-six years of constitutional operation have demonstrated both the power and the limits of this approach. The reservation system has undeniably created pathways to education, government employment, and political representation for communities that were historically excluded from all three. The political empowerment of OBCs, SCs, and STs through reservation and through electoral mobilization has transformed India's political landscape in ways that have genuine democratic significance. A constitution that articulated universal rights and made reservation possible has been a more enabling framework for marginalized communities than alternative constitutional frameworks that simply proclaimed equality without attending to the structural conditions of inequality.

But the constitutional approach has also produced profound disappointments and unresolved contradictions. The reservation system's concentration on government employment and educational institutions has been increasingly limited in its reach as the government's share of formal employment has contracted and as the private sector has expanded. The constitutional permission for private sector affirmative action has been contested rather than mandated, and successive governments have failed to extend reservation requirements to the private sector with the vigor that genuine commitment to constitutional equality would require.

The persistence of caste discrimination, caste violence, and caste-based social hierarchy seventy-six years after the Constitution's proclamation of untouchability's abolition is the single most damning piece of evidence against the constitutional approach. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 and its subsequent amendments have created a specific legal framework for prosecuting caste-based violence and discrimination. But the conviction rates under the Act remain shockingly low, the institutional commitment to its enforcement is inconsistent and politically mediated, and the lived reality of Dalits in India continues to be marked by discrimination, exclusion, and violence at every level of social interaction.

The National Crime Records Bureau data for 2023 and 2024 documented high numbers of registered atrocities against Scheduled Castes, including murders, rapes, and other forms of violence, with conviction rates that reflected a systematic failure of the criminal justice system to deliver justice to caste victims. The constitutional commitment to eliminating caste oppression requires not only anti-discrimination law but the reconstruction of the social, economic, and political conditions that reproduce caste hierarchy. The Constitution's inability to mandate or produce this reconstruction reflects the limits of what a legal document, however powerful, can achieve against deeply embedded social structures.

II. The Right to Education and Its Constitutional Failures

The Right to Education Act 2009, enacted pursuant to the Eighty-Sixth Amendment that inserted Article 21A into the Constitution, was supposed to be the constitutional culmination of the promise of universal elementary education for all children. The addition of free and compulsory education for children of 6 to 14 years as a Fundamental Right was genuinely significant. But the operational reality of the RTE Act's implementation, documented by researchers through 2024 and 2025, has been a story of gap between constitutional aspiration and institutional delivery that is familiar across the entire range of social rights in the Indian constitutional system.

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The RTE Act's requirement that private schools reserve 25 percent of their entry-level seats for children from economically weaker sections and disadvantaged groups has been implemented with wildly uneven results across states. The reimbursement mechanism by which the government was supposed to compensate private schools for the reserved seats has functioned poorly in many states, creating incentives for private schools to minimize their RTE compliance. The quality of education in government schools, which absorb the majority of children from poorer families, continues to fall short of constitutional expectations despite the substantial public investment that the RTE framework requires.

The Annual Status of Education Report consistently documents what educational researchers have called a learning crisis in Indian schools: millions of children who are enrolled and attending school but who are not acquiring basic literacy and numeracy. This learning crisis reflects inadequate teacher training, high teacher absenteeism, poor school infrastructure, inadequate teaching materials, and educational approaches that are poorly suited to the learning needs of children from disadvantaged backgrounds. None of these problems are beyond constitutional reach. All of them reflect failures of constitutional governance rather than failures of constitutional aspiration.

III. Health, the Right to Life, and the Constitutional Failure to Care

The Supreme Court's interpretation of Article 21's right to life has, through decades of public interest litigation, been expanded to include the right to health, the right to emergency medical treatment, and the right to a healthy environment. These judicial expansions of the right to life represent the constitutional system at its most ambitious and most responsive to public advocacy. But the expansion of constitutional rights through judicial interpretation has not been matched by the expansion of the health infrastructure and public expenditure that genuine realization of health rights would require.

India's public health expenditure as a percentage of GDP remains among the lowest in the world for a country of India's size and development level. The consequences of this constitutional failure of public investment are documented in every health indicator. Maternal and infant mortality rates, while improved over the post-independence period, remain high. Non-communicable disease burden, mental health services, and the coverage of basic preventive care are all inadequate relative to the constitutional promise of the right to health. The COVID-19 pandemic of 2020 to 2022 exposed the catastrophic scale of India's health system inadequacy in the most concrete and fatal terms, with the collapse of oxygen supply, hospital capacity, and healthcare delivery during the second wave of April and May 2021 causing deaths on a scale that reflected not merely pandemic management failure but decades of constitutional failure to invest in public health.

The constitutional framework contains no specific provision mandating public health investment at any particular level. The Directive Principles include the duty of the state to raise the level of nutrition and standard of living of people and to improve public health (Article 47). But as non-justiciable principles, these provisions have provided at best indirect constitutional leverage through the judicial expansion of Article 21, and the executive has resisted judicial supervision of health expenditure choices as an intrusion on policy discretion. The result is that the

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constitutional right to health exists in the court's jurisprudence but not in the budget, and the gap between juridical proclamation and material reality has costs measured in preventable deaths.

CHAPTER NINE

INDIA AND ITS NEIGHBORS: THE CONSTITUTIONAL BASIS OF A RECKLESS FOREIGN POLICY

I. Constitutional Structure and Foreign Policy Centralization

The Constitution of India vests the power over external affairs entirely in the Union government. External affairs is an exclusive Union subject under Entry 10 of the Union List. The conduct of foreign policy, the ratification of treaties, the deployment of armed forces beyond India's borders, the management of borders, and the recognition of states are all exclusive Union functions, beyond any meaningful parliamentary oversight and entirely beyond state government participation.

This absolute centralization of foreign policy authority in the Union executive has produced a foreign policy apparatus that is extremely difficult to hold accountable, that operates with minimal democratic oversight, and that has reflected the biases, interests, and limitations of successive Union governments without any meaningful mechanism for incorporating the perspectives, interests, and knowledge of border communities and regions most directly affected by foreign policy decisions.

The constitutional framework's failure to provide for genuine parliamentary scrutiny of foreign policy has been particularly significant in India's relationships with its immediate neighbors. Decisions about military deployments, economic assistance programs, border management, water sharing agreements, and trade relationships with Pakistan, China, Nepal, Bangladesh, Sri Lanka, Myanmar, and Bhutan have been made by small executive groups with minimal legislative oversight and almost no consultation with the states and communities most directly affected by these relationships.

II. The China Relationship and Constitutional Governance Failures

India's relationship with China, which deteriorated dramatically following the Galwan Valley clashes of June 2020 in which twenty Indian soldiers were killed, has revealed systematic failures of constitutional governance in the domain of national security and external affairs. The executive's initial response to the Galwan clashes was characterized by opacity, information management, and the suppression of inconvenient facts that reflected the constitutional system's absence of effective mechanisms for parliamentary or judicial scrutiny of national security matters.

The Prime Minister's statement in June 2020, that no territory had been occupied and no intrusion had occurred, was subsequently contradicted by satellite imagery, reporting by

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international media organizations, and eventually by the government's own subsequent acknowledgments that negotiated disengagement at multiple friction points had been necessary. The constitutional framework that vests national security decision-making entirely in the executive without meaningful oversight mechanisms enabled this information management without creating any mechanism for accountability.

The lack of parliamentary accountability for national security failures is a constitutional gap that has never been more stark. The parliamentary Standing Committee on External Affairs has limited access to classified information, limited capacity to summon executive witnesses who refuse to appear, and limited time to examine the complex and rapidly evolving situations that characterize India's external relationships. The constitutional design that treats national security as the exclusive domain of the executive has produced not greater security but less accountability, with the consequences falling on soldiers at the border and citizens throughout the country.

III. The Pakistan Relationship, Partition, and Constitutional Irresolution

The constitutional framework of independent India inherited the trauma of Partition without providing adequate mechanisms for managing its ongoing consequences. The Government of India Act 1935, from which the Indian Constitution borrowed so extensively, had been drafted in a colonial context that included the territory that became Pakistan. The partition of the subcontinent in 1947, which accompanied independence and which was itself the product of British colonial policies that played Muslim and Hindu communities against each other for decades, left both India and Pakistan with constitutional frameworks designed for a united subcontinent, applied to divided nations with intense mutual hostility.

The India-Pakistan relationship has been the single most significant external constraint on India's constitutional democracy over the post-independence period. The perception of the Pakistani threat has been systematically used to justify constitutional and extra-constitutional measures that have restricted fundamental rights, expanded executive power, militarized governance in border regions, and legitimized the suppression of dissent on national security grounds. The constitutional authorization of the AFSPA in the northeast and in Jammu and Kashmir, the preventive detention provisions of Article 22, the expansive definitions of threats to national security that have been used to prosecute journalists and activists, all have been justified in significant part by reference to the security environment that the unresolved Pakistan relationship creates.

This dynamic reflects a constitutional failure of the most fundamental kind. A constitutional democracy is supposed to manage its security needs within a framework of rights protection and democratic accountability. When security needs are real, as they are in India given the genuine threats at its borders, a democratic constitution must provide mechanisms for distinguishing genuine security requirements from the political instrumentalization of security claims. The Indian Constitution's emergency and security provisions have never successfully made this distinction, providing the executive with legal tools that can simultaneously serve genuine security purposes and serve the suppression of domestic political opposition.

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IV. The Neighborhood First Policy and Its Constitutional Discontents

The "Neighborhood First" policy that successive Indian governments have proclaimed as their approach to South Asian regional relations has been more aspirational than operational, and its failures reflect in significant part the constitutional centralization of foreign policy that has made it difficult to develop sustainable regional relationships that are rooted in democratic accountability and the genuine interests of border communities.

India's relationships with Nepal, Bangladesh, Sri Lanka, and Bhutan all involve dimensions of power asymmetry that the smaller neighbors experience as pressure and that Indian constitutional governance has been poorly equipped to manage with the sensitivity and the long-term strategic vision that durable regional relationships require. The constitutional concentration of foreign policy in the Union executive, without state government participation even in matters like water sharing where states are directly and vitally affected, has produced a series of bilateral relationship failures that a more constitutionally decentralized and democratically accountable foreign policy approach might have avoided.

The Teesta River water sharing dispute between India and Bangladesh illustrates this constitutional problem with particular clarity. The river affects primarily West Bengal, and the West Bengal government's opposition to a proposed sharing arrangement that the Union government had tentatively agreed to with Bangladesh made implementation of the agreement politically impossible. But the constitutional framework provides no mechanism for the state's legitimate concerns about water resource management to be institutionally incorporated into the negotiating process. The state government can exercise political leverage informally, through the ruling party's federal coalition calculations, but has no formal constitutional role in a foreign policy process that directly affects its territory and its people.

The result is a foreign policy that is neither effectively controlled by the Union government, which cannot always deliver on its international commitments because of state-level political resistance, nor by state governments, which have no constitutional standing in the foreign policy domain. The constitutional gap between foreign policy authority and the geographic reality of federalism has made India's regional diplomacy consistently less effective than the country's size, economic weight, and democratic credentials would otherwise enable.

CHAPTER TEN

THE CASE FOR CONSTITUTIONAL ABOLITION AND RECONSTRUCTION: PHILOSOPHICAL, JURISPRUDENTIAL, AND POLITICAL FOUNDATIONS

I. The Philosophical Case: Constitution as Social Contract and Its Renewal

The social contract theory of political obligation, from Hobbes through Locke and Rousseau to Rawls, provides one philosophical foundation for understanding why constitutional renewal may be not merely permissible but obligatory when a constitutional order has failed to deliver on the

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terms of the original agreement. The Indian Constitution implicitly invokes social contract theory through its Preamble's "We, the People" formulation. But the social contract it describes was entered into by a constituent assembly elected on a franchise that excluded much of the adult population, that met without any mechanism for popular ratification of its product, and that produced a document more deeply influenced by the priorities of an elite of lawyers, industrialists, and politicians than by the aspirations of the masses of ordinary Indians in whose name it spoke.

John Rawls's theory of justice, particularly its "original position" thought experiment in which principles of justice are chosen by rational agents behind a "veil of ignorance" about their position in the resulting society, provides a useful analytical tool for evaluating the Indian constitutional order. Would rational agents behind a veil of ignorance, not knowing whether they would be born into a Dalit family in Bihar, a tribal community in Jharkhand, a Muslim family in Uttar Pradesh, a woman in rural Rajasthan, a Manipuri Naga in the northeast, or a member of the urban professional class in Mumbai, choose the constitutional arrangements that currently govern India? Would they choose a constitution that concentrates power in the executive without adequate separation of power? Would they choose a fundamental rights chapter whose every guarantee is immediately qualified by state-overriding exceptions? Would they choose a federal system so biased toward the center that it systematically disadvantages poorer and more diverse states? Would they choose a judicial system so expensive and inaccessible as to effectively exclude the poor from constitutional protection?

The answer, under any serious application of Rawlsian analysis, is negative. The Indian constitutional order, evaluated from the standpoint of what rational agents behind a veil of ignorance would choose, fails on every dimension that matters most to the most vulnerable members of society. This is not a coincidence. It is the predictable result of a constitutional drafting process from which the most vulnerable were substantively excluded.

II. The Jurisprudential Case: Constitutional Failure and the Right to Constitutional Revolution

The jurisprudential tradition from which the Indian Constitution draws most heavily, the English common law tradition and the constitutional law of liberal democracies, does not easily accommodate the concept of a right to constitutional revolution. The basic structure doctrine established in Kesavananda Bharati, which holds that certain core features of the Constitution are beyond the amending power of Parliament, is itself a form of constitutional entrenchment that limits the popular right to constitutional self-determination.

But the jurisprudential tradition is not monolithic on this question. The natural law tradition, from which significant strands of constitutional jurisprudence flow, holds that positive law loses its claim to obedience when it systematically violates principles of fundamental justice. The American Declaration of Independence asserts the right of the people to alter or abolish a government that destroys their inalienable rights and to institute new government. Carl Schmitt's concept of constituent power, however politically controversial, accurately identifies that the power to create a constitution is different from and prior to the power delegated by a

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constitution, and that this constituent power remains with the people and cannot be finally extinguished by any constitutional order.

Contemporary constitutional scholars working in the post-colonial tradition, including Rajeev Bhargava, Uday Mehta, Pratap Bhanu Mehta, and the scholars working in their intellectual tradition through 2025, have developed frameworks for understanding constitutional legitimacy that go beyond formal validity to ask whether a constitutional order is genuinely responsive to the claims of those it governs. These frameworks suggest that the legitimacy of the Indian Constitution has been progressively eroded by its systematic failure to deliver on its fundamental promises and that the question of constitutional renewal is not only jurisprudentially permissible but increasingly constitutionally necessary.

III. The Historical Case: Constitutional Reconstruction in Comparative Perspective

The history of constitutional reconstruction in democratic societies provides precedents for understanding what genuine constitutional renewal looks like and what conditions make it possible and desirable. These precedents are relevant to the Indian situation not as direct models but as evidence that constitutional systems can be fundamentally restructured through democratic processes when the political will and the constitutional culture to support such restructuring exist.

South Africa's transition from the apartheid constitution to the post-apartheid Constitution of 1996 is perhaps the most relevant comparative precedent. The South African constitution-making process, which involved a negotiated transition, an interim constitution, extensive public participation, and the adoption of a final constitution by an elected constitutional assembly, produced a document that, whatever its subsequent implementation failures, was genuinely designed to break with the constitutional order of racial oppression and to establish new foundations for democratic governance. The process was not revolutionary in the violent sense but it was revolutionary in the constitutional sense: it replaced a constitutional order that had been used to systematically victimize the majority of the population with one designed to empower that majority.

Germany's Basic Law of 1949, adopted after the catastrophic failure of the Weimar Constitution to prevent the rise of fascism, incorporated specific constitutional learning from the Weimar failure, including stronger protection for fundamental rights, a Constitutional Court with explicit powers to protect these rights, and provisions prohibiting the constitutional order itself from being dismantled through constitutional means. The Basic Law's "eternity clauses," which prohibit even constitutional amendment of certain fundamental provisions, reflect the jurisprudential lesson that a democratic constitutional order must protect itself against being used as a tool of its own destruction.

Colombia's Constitution of 1991, adopted through a constituent assembly convened outside the formal amendment procedure of the existing constitution, reflects a Latin American tradition of constitutional renewal through popular mobilization and constituent assemblies that is particularly relevant to the Indian situation. The Colombian process, while not free of elite influence, incorporated broader popular participation in constitutional design than the original

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constitution-making processes of most countries, and the constitution it produced contained significantly stronger social rights provisions, indigenous rights protections, and mechanisms for democratic participation than its predecessor.

The common element in these successful constitutional reconstructions is the combination of deep political crisis that made the inadequacy of the existing constitutional order undeniable, organized political forces capable of channeling the demand for constitutional change through democratic rather than violent means, and constitutional cultures with sufficient institutional and civic capacity to design and adopt a more genuinely democratic framework. India in 2026 possesses all three of these elements: the constitutional crisis is deep and extensively documented, the political forces capable of democratic constitutional renovation exist even in conditions of majoritarian dominance, and the intellectual and civic resources for genuine constitutional redesign are formidable.

IV. The Political Case: Constitutional Renewal as Democratic Necessity

The political case for constitutional renewal in India is inseparable from the state of Indian democracy in 2026. The V-Dem Institute's sustained characterization of India as an electoral autocracy, Freedom House's "partly free" designation, the Economist Group's "flawed democracy" classification, and the sustained academic documentation of democratic backsliding all point to the same basic diagnosis: India's constitutional democracy is under severe and deepening stress that the existing constitutional framework has proven unable to arrest.

This diagnosis is not politically neutral. The ruling party and its supporters contest it, arguing that India's elections remain genuinely competitive, that the opposition is able to win state elections, that the courts continue to function independently in many areas, and that the classification of India as an electoral autocracy reflects Western liberal bias against a self-confident non-Western democracy. These counter-arguments deserve serious engagement rather than dismissal. Indian democracy is complex and contested, and its condition is not reducible to any single international classification.

But the evidence that the constitutional framework's structural features are enabling the concentration of power in ways that threaten genuine democratic accountability is persuasive and comes from multiple independent sources. The subversion of constitutional institutions documented by Indian scholars, journalists, lawyers, and activists, the systemic erosion of institutional independence, the weaponization of law against political opposition, the majoritarian assault on secularism, the systematic exclusion of minorities from equal constitutional citizenship, these are not fabrications of international organizations with anti-India agendas. They are reported by Indians, documented by Indian courts, and experienced by Indian citizens.

The political case for constitutional renewal is therefore a democratic case. It argues that the deepening of Indian democracy requires not merely the reform of specific constitutional provisions but the reconstruction of the constitutional foundations of democratic accountability, rights protection, federalism, and citizen sovereignty. This is a democratic argument because it takes seriously the constitutional promise of "We, the People" and asks whether the current

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constitutional order genuinely fulfills that promise for all the people, not merely for those who are powerful, wealthy, Hindu, upper-caste, Hindi-speaking, and male.

CHAPTER ELEVEN

A NEW CONSTITUTIONAL VISION: PRINCIPLES, PROPOSALS, AND THE PATH FORWARD

I. Core Principles for Constitutional Reconstruction

Any serious proposal for constitutional reconstruction must begin with a set of foundational principles that respond to the failures of the existing constitutional order and reflect the needs and aspirations of a genuinely democratic society. These principles are not proposed as a complete constitutional design but as the intellectual and political foundations from which a democratic constitutional design process should proceed.

The first principle is genuine popular sovereignty. A constitution that claims to derive its authority from "We, the People" must be made by the people through a genuinely participatory process. This requires a constituent assembly that is broadly representative of India's diversity in terms of caste, class, gender, religion, region, and language. It requires extensive public deliberation that goes beyond the consultation of organized interests and reaches the communities most affected by constitutional choices. And it requires popular ratification of the final constitutional text through a referendum that gives every citizen a direct voice in the foundational law that will govern their lives.

The second principle is the transformation of the rights framework from a rights-with-exceptions model to a rights-as-absolute-subject-only-to-proportionate-restriction model. The existing constitution's approach of granting rights and then immediately qualifying them with broad state-overriding exceptions should be replaced by a framework in which the state must demonstrate, in every specific case, that any restriction on fundamental rights is necessary, proportionate to a legitimate aim, and the least restrictive means available. This approach, which reflects the human rights jurisprudence developed under international human rights law and adopted by many constitutional democracies, would fundamentally shift the presumption of the rights framework from deference to the state toward protection of the individual.

The third principle is genuine federalism, meaning a constitutional distribution of powers, revenues, and administrative autonomy that enables state governments to genuinely govern within their constitutional domains without chronic financial or administrative dependence on the center. This requires a fundamental restructuring of the Seventh Schedule, the financial arrangements between the Union and the states, the Governor's role, the emergency provisions relating to states, and the mechanisms for intergovernmental cooperation and dispute resolution. A genuinely federal India would be a more democratic India, because it would bring governance closer to the governed and create multiple centers of political accountability rather than concentrating all significant power in a single Union government.

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The fourth principle is institutionalized separation of powers, meaning the constitutional entrenchment of the independence of the judiciary, the Election Commission, the anti-corruption bodies, the audit and financial accountability institutions, the media regulatory authorities, and the other institutions that are supposed to provide the checks on executive power that parliamentary democracy alone cannot provide. These institutions must be independent in their composition (through appointment processes that are not controlled by the executive), in their funding (through constitutional provisions for direct parliamentary appropriation rather than executive budget allocation), and in their operation (through constitutional prohibitions on executive direction or interference).

The fifth principle is the constitutional recognition and protection of social rights, meaning the conversion of the Directive Principles from non-justiciable aspirations into constitutional obligations with specified minimum standards and judicially enforceable timelines for implementation. The right to education, the right to health, the right to food, the right to housing, the right to work, and the right to social security should be constitutionally guaranteed as rights rather than aspirations, with the state having the burden of demonstrating progress toward their realization and the courts having the authority to compel compliance where progress is inadequate.

The sixth principle is the constitutional decolonization of the administrative, police, and judicial systems, meaning the constitutional requirement that all three systems be redesigned from their current colonial foundations to serve the needs of a democratic republic of free citizens rather than to govern a colonial subject population. This requires the abolition of the current police architecture and its replacement with community-accountable policing structures, the transformation of the bureaucracy from a generalist control apparatus to a specialized service delivery organization, and the redesign of the judicial system to make it accessible, affordable, culturally responsive, and able to deliver justice in a timeframe that is meaningful to those who seek it.

II. The Decolonization Imperative

The most fundamental argument for constitutional reconstruction rather than amendment is the decolonization imperative. The Indian Constitution, as this commentary has documented across all twenty parts, is a substantially colonial document. It inherited from the Government of India Act 1935 not merely specific provisions but a governing philosophy: the philosophy of a state that concentrates power for the purpose of governing a large, diverse, and potentially resistant population. This philosophy is incompatible with genuine democratic sovereignty.

Decolonization of the constitutional order does not mean the rejection of all that the colonial period contributed to Indian intellectual and legal culture. The common law tradition, whatever its colonial origins, has developed genuine tools for the protection of individual rights and the accountability of state power that have been adapted and enriched by Indian constitutional jurisprudence over seventy-six years. The constitutional promise of universal suffrage, of equal citizenship, of fundamental rights, of federalism, are not colonial impositions but genuine achievements of the constitutional project that should be preserved and strengthened in any constitutional reconstruction.

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What decolonization means is the identification and elimination of the specifically colonial elements of the constitutional order: the executive supremacy that mirrors colonial executive power, the bureaucratic insulation from democratic accountability that mirrors colonial administrative design, the police system's orientation toward control rather than service that mirrors colonial policing philosophy, the emergency powers that mirror colonial emergency regimes, the language hegemony that mirrors colonial language policy, and the constitutional treatment of citizens as subjects to be governed rather than sovereign individuals whose rights constrain the state.

This is not a simple or painless process. Colonial institutions become deeply embedded in the interests and habits of those who benefit from them. The IAS, the police services, the colonial court system, the English-medium education hierarchy, all have powerful constituencies who have organized their lives, careers, and social positions around the continuation of the colonial inheritance. Constitutional decolonization requires the political courage to challenge these constituencies in the name of the democratic majority who are systematically disadvantaged by the colonial inheritance.

III. The Immediate Reform Agenda: What Must Happen Before Full Reconstruction

The argument for constitutional reconstruction does not mean that immediate and partial reforms are unnecessary or counterproductive. On the contrary, the political, institutional, and civic conditions necessary for genuine constitutional reconstruction must be created through a process that includes immediate reforms of the worst abuses of the current constitutional order. These immediate reforms should be understood not as substitutes for constitutional reconstruction but as the first steps of a democratic process that must eventually go much further.

The most urgent immediate reform is the repeal or fundamental transformation of the UAPA and the other laws that have been used to imprison political opponents, civil society activists, journalists, and minority community members without trial or with trials that systematically deny the presumption of innocence. The constitutional authorization for preventive detention in Article 22 should be amended to establish minimum procedural safeguards, maximum periods of detention without judicial approval, and genuine judicial review of detention orders. The UAPA designations of individuals as terrorists should require prior judicial confirmation rather than being made by executive order.

The second immediate reform is the genuine independence of the Election Commission through a constitutional amendment establishing the appointment process recommended by the Supreme Court in Anoop Baranwal but subsequently reversed by legislation: a committee including the Leader of the Opposition and the Chief Justice of India, with the current parliamentary reversal of this being itself a constitutional amendment that demonstrates the legislature's willingness to configure institutional independence in ways that serve the ruling party's interests.

The third immediate reform is the abolition or fundamental restructuring of the Governor's office. The Governor as currently configured is a colonial anachronism that serves primarily as a political instrument of the center. The alternatives include abolition of the Governorship entirely (as some constitutional scholars have proposed), or a reformed Governorship in which the

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Governor is chosen by the state legislature rather than the center and serves as a genuinely constitutional rather than political actor.

The fourth immediate reform is police reform in compliance with the Supreme Court's directions in Prakash Singh, which have been substantially ignored for twenty years. The constitutional authorization of the Police Act should be replaced by a constitutional mandate for community-accountable policing, with specific structural requirements for civilian oversight boards, independent complaints authorities, and transparent accountability mechanisms.

The fifth immediate reform is the constitutionalization of a genuine right to information, expanding upon the Right to Information Act 2005 to create a constitutional provision that specifically prohibits the use of official secrecy provisions to conceal state wrongdoing, specifies minimum timelines for response to information requests, creates genuinely independent information commissioners, and extends the right to information to private entities performing public functions.

IV. The Constituent Assembly Question: How to Make a New Constitution

The most contested and practically difficult question in the constitutional reconstruction debate is the procedural one: how can a new constitution be made? The existing Constitution's amendment procedure under Article 368 does not provide for constitutional replacement, and the basic structure doctrine established in Kesavananda Bharati would prohibit the use of the amendment power to destroy the Constitution's basic structure. A constituent assembly convened outside the existing constitutional framework, as in the Colombian model, would need political legitimacy that transcends existing constitutional authorization.

Several approaches have been proposed by constitutional scholars. One approach is to use the existing Parliament as a constituent assembly, arguing that Parliament's constituent power extends to the drafting of a new constitution if the political will exists. This approach has the advantage of working within the existing legal framework but the disadvantage of producing a new constitution controlled by the same political actors who dominate the current system. Another approach is to create a special constituent assembly through a constitutional amendment that suspends the normal constitutional operation while a new document is drafted and ratified, an approach that requires the political consensus necessary to pass a constitutional amendment.

The most genuinely democratic approach is a citizens' constitutional convention: a body constituted not through political party representation but through random selection (sortition) and civil society representation, tasked with drafting constitutional proposals that would then be submitted to a parliamentary vote and a popular referendum. This approach would most directly embody the principle of popular constituent power and would most effectively insulate the constitutional drafting process from the dominance of organized political interests. It is also politically the most difficult to achieve, requiring a level of political consensus and institutional innovation that the current political environment makes unlikely in the short term.

What the constitutional reconstruction debate requires at this moment is not the specification of a single correct procedure but the creation of a broad democratic conversation about the need for

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constitutional renewal, the principles that should guide it, and the process through which it should happen. This conversation is already beginning, in academic seminars, in civil society organizations, in the writings of constitutional scholars, and in the political discourse of opposition parties and movements that are articulating an alternative constitutional vision. The role of constitutional scholarship, including this commentary, is to contribute to this conversation with analytical depth, historical honesty, and philosophical seriousness.

CHAPTER TWELVE

THE JURISPRUDENCE OF TRANSFORMATION: THEORIES, PHILOSOPHIES, AND THE INTELLECTUAL FOUNDATIONS OF CONSTITUTIONAL RENEWAL

I. Transformative Constitutionalism and Its Application to India

The concept of transformative constitutionalism, developed by Karl Klare and elaborated in the South African constitutional context by scholars including Theunis Roux and Sandra Liebenberg, has significant relevance to the Indian constitutional situation. Transformative constitutionalism holds that constitutions can and should be used not merely to regulate existing social arrangements but to transform them, that constitutional adjudication should be guided by a commitment to the progressive realization of social and economic equality, and that the judiciary has a responsibility to interpret constitutional provisions in ways that advance transformative goals rather than entrench existing inequalities.

The Indian Supreme Court's public interest litigation jurisprudence, particularly in its activist periods of the 1970s and 1980s, came close to a transformative constitutionalist approach. The court's willingness to entertain epistolary petitions from prisoners, bonded laborers, and environmental activists, to issue innovative remedial orders, and to develop the jurisprudence of positive constitutional obligations reflected a genuine commitment to using constitutional adjudication as a tool of social transformation.

But the transformative potential of the Indian constitutional system has been consistently constrained by the same structural features that constrain the system's other democratic functions. A court that depends on the executive for the enforcement of its orders cannot consistently challenge executive power. A court that operates within a legal culture of formal deference to parliamentary sovereignty cannot easily develop the jurisprudence of substantive constitutional limits on legislative power that transformative constitutionalism requires. A court whose members are appointed by a process over which the executive has substantial influence cannot be fully insulated from the political pressures that transformative adjudication inevitably generates.

The new constitutionalism that transformative scholars advocate requires structural constitutional changes, not merely jurisprudential innovation. It requires a constitutional framework that is explicitly committed to transformation, that provides the institutional conditions for transformative adjudication, and that constitutionally mandates the progressive realization of

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social rights rather than treating them as policy preferences of the legislature. None of these requirements can be met through the existing constitutional framework's amendment procedure alone.

II. The Critical Legal Studies Critique and India's Constitutional Reality

The Critical Legal Studies movement, associated with scholars including Roberto Unger, Duncan Kennedy, and Mark Tushnet, argues that law is not a neutral system of rules but a set of institutional arrangements that reflect and reproduce existing power structures. The CLS critique of constitutional law holds that constitutional rights are indeterminate, that they can be interpreted to justify almost any legal outcome, and that their ostensible protection of individual rights serves primarily to legitimate the existing social order rather than to transform it.

Applied to India, the CLS critique is partially compelling and partially overstated. It is compelling in its identification of the ways in which Indian constitutional law has been interpreted to legitimate the existing power structure: the way in which property rights were protected while land reform was frustrated, the way in which economic liberalization has been constitutionally sanctioned while social rights remain non-justiciable, the way in which the fundamental rights chapter's qualifications have been interpreted to authorize the suppression of political opposition. The constitutional indeterminacy that CLS identifies is real, and it has been systematically resolved in India in favor of state power and against individual rights in politically sensitive cases.

But the CLS critique overstates the case when it suggests that constitutional rights are entirely futile. The Indian constitutional experience includes genuine rights victories, moments when constitutional provisions have protected individuals and communities against state power in ways that made real differences to their lives. The Supreme Court's development of the right to food jurisprudence, the right to education, the right to a clean environment, and the right to privacy (most recently in the landmark Puttaswamy judgment of 2017) represent genuine constitutional achievements that have benefited real people. The PIL jurisprudence at its best has been a genuine tool of constitutional transformation. The constitutional promise, even in an imperfect document, creates political and legal leverage that is not negligible.

The synthesis that this commentary proposes is neither the uncritical celebration of the existing constitutional order nor the complete dismissal of constitutional rights as ideological mystification. It is a critical reformulation: acknowledgment of what the constitutional order has achieved alongside unflinching analysis of its structural failures, and commitment to constitutional reconstruction that preserves what is genuine in the constitutional tradition while dismantling what is colonial, unjust, and undemocratic.

III. Post-Colonial Legal Theory and the Constitutional Question

Post-colonial legal theory, drawing on the intellectual traditions of Frantz Fanon, Aime Cesaire, and W.E.B. Du Bois as applied to legal and constitutional analysis by scholars including Makau Mutua, Antony Anghie, and Balakrishnan Rajagopal, provides perhaps the most fundamental intellectual framework for understanding the Indian constitutional situation. Post-colonial theory

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insists on the historical context of legal and constitutional arrangements, asks who created them and for whose benefit, and is consistently skeptical of the argument that colonial institutions can be reformed from within to serve genuinely decolonial purposes.

Balakrishnan Rajagopal's work on international law and social movements, and his more recent work on housing rights and development as a constitutional issue, is directly relevant to the Indian constitutional situation. His argument that constitutional rights frameworks in post-colonial states have often served to channel social movements into legal arenas where they can be managed and contained rather than transformed into genuine political power reflects an important truth about the Indian PIL experience. The Supreme Court's public interest litigation jurisdiction has been a remarkable constitutional innovation, but it has also become a mechanism through which social and political conflicts are juridicalized and subjected to the court's management, often producing outcomes that are symbolically significant but materially limited.

The post-colonial critique also illuminates the constitutional treatment of India's indigenous communities, the Adivasis whose relationship to land, forest, and community governance reflects pre-colonial political traditions that the colonial legal system did not recognize and that the Indian Constitution has only partially and inadequately accommodated. The Fifth and Sixth Schedules of the Constitution, which provide special governance arrangements for tribal areas, represent an acknowledgment of tribal distinctiveness that is genuinely significant but has been implemented with chronic inadequacy. The Forest Rights Act 2006 represented a major advance in post-colonial constitutional recognition of Adivasi rights, but its implementation has been systematically undermined in ways that reflect the post-colonial state's continuation of colonial approaches to land and forest governance.

IV. Habermasian Deliberative Democracy and Constitutional Reconstruction

Jurgen Habermas's theory of deliberative democracy, which grounds constitutional legitimacy not in the original agreement of a founding moment but in the ongoing processes of public deliberation through which citizens continue to exercise collective self-governance, provides a particularly useful framework for thinking about constitutional reconstruction in India. For Habermas, the legitimacy of a constitutional order depends on the quality of the deliberative processes through which constitutional principles are articulated and applied. A constitutional order that systematically excludes or marginalizes certain voices from deliberation, that permits the dominance of private economic interests in public political discourse, or that allows executive power to override deliberative processes, is constitutionally illegitimate regardless of its formal validity.

Applied to India, the Habermasian analysis reveals the extent to which the constitutional order has been systematically corrupted by the conditions of its public sphere. The concentration of media ownership in the hands of a small number of politically connected corporations, the systematic pressure on media organizations that practice independent journalism, the use of tax raids, licensing threats, and advertising withdrawal to discipline critical media, the social media environments in which organized partisan actors systematically manipulate public discourse, all these factors that have intensified dramatically from 2014 to 2026 represent a profound Habermasian legitimacy crisis in Indian constitutional democracy.

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The constitutional reconstruction that Habermasian theory demands is not merely the reform of specific institutional arrangements but the restoration of the conditions of genuinely free and equal public deliberation. This requires constitutional protections for media independence that go far beyond the current Article 19 free speech guarantee, including specific protections against ownership concentration, against state advertising as an instrument of media discipline, and against the use of regulatory powers to punish critical journalism. It requires constitutional frameworks for digital public space that regulate algorithmic manipulation of public discourse. And it requires the constitutional guarantee of a public broadcaster that is genuinely independent of both government and commercial pressure, capable of providing the informational commons that democratic deliberation requires.

CHAPTER THIRTEEN

WHAT A NEW CONSTITUTION MUST ADDRESS: SPECIFIC STRUCTURAL PROPOSALS

I. The Fundamental Rights Revolution

A new Indian Constitution must fundamentally reconceptualize the relationship between fundamental rights and state power. The current model, in which rights are granted and immediately qualified by state-overriding exceptions, must be replaced by a model in which rights are primary and the state's power to restrict them is the exception requiring strict justification. This requires not merely rewording but architectural reconstruction.

The new rights framework should incorporate the international human rights standards that India has accepted through its ratification of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. These covenants provide a more sophisticated framework for rights protection than the Indian Constitution's original Part III, including the concept of non-derogable rights (those that cannot be restricted even in emergencies), the principle of proportionality in the justification of restrictions, and the positive obligation of the state to create conditions in which rights can be genuinely realized.

The non-derogable rights in any new constitution should include at minimum: the right to life; the prohibition of torture, cruel, inhuman or degrading treatment; the prohibition of slavery; the principle of non-retroactive criminal punishment; the recognition of legal personality; and the freedom of thought, conscience, and religion in its internal (as opposed to external) dimension. No emergency, however severe, should be constitutionally permitted to suspend these rights.

The rights framework should also include a constitutional requirement that the government must demonstrate, in any case where it claims the authority to restrict a fundamental right, that the restriction serves a legitimate and constitutionally recognized aim, that it is rationally connected to that aim, that it is proportionate to the aim and does not restrict the right more than necessary, and that its benefits in terms of the legitimate aim outweigh its costs in terms of rights restriction. This proportionality analysis, which is the standard applied in constitutional systems ranging

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from Germany to South Africa, would create a constitutional culture of genuine rights protection that the current "reasonable restrictions" framework has failed to produce.

II. A Real Federal System: Power to the Regions

The new constitution must create a genuinely federal system in which the distribution of powers between the Union and the states is designed to bring governance as close to the governed as possible, consistent with the requirements of national unity and the protection of constitutional rights throughout the country. This requires a fundamental restructuring of the Seventh Schedule, the financial arrangements, and the institutional mechanisms for intergovernmental relations.

The principle of subsidiarity, central to European federal traditions and increasingly influential in constitutional design globally, holds that governmental decisions should be made at the lowest level of government capable of addressing the issue effectively. Applied to India, subsidiarity would reverse the current presumption of central authority and replace it with a presumption of state authority, with the central government's powers limited to those that genuinely require national uniformity or that involve coordination problems across state borders.

The financial architecture must accompany this devolution of legislative power. A genuinely federal system requires that each level of government have fiscal resources adequate to its constitutional responsibilities. This means a restructuring of the tax assignment that provides states with a larger share of the most productive tax bases, a formula for intergovernmental transfers that is constitutionally entrenched and politically insulated from executive manipulation, and the elimination of conditional central grants as a mechanism for overriding state policy autonomy in constitutionally state-exclusive domains.

The new constitutional framework for federalism must also address the rights of local governments, panchayats, and urban local bodies, which the current Constitution recognizes in Parts IX and IX-A but treats as entirely dependent on state discretion for their actual powers, functions, and finances. A new constitution should constitute local governments as the third tier of federal governance with their own constitutionally mandated functions, their own revenue bases, and their own accountability mechanisms.

III. Judicial Independence and Constitutional Courts

A new constitution must create the conditions for genuine judicial independence that the current system has been unable to sustain. This requires structural changes to the appointment process, the accountability mechanisms, and the institutional design of the highest courts.

The appointment of judges to the Supreme Court and High Courts through a process that is genuinely independent of executive control is the most fundamental requirement. Various models exist: the collegium system's problems have been extensively debated, and the National Judicial Appointments Commission struck down by the Supreme Court in 2015 was a flawed response to real problems of collegium transparency and accountability. A new constitutional framework for judicial appointments should draw on international best practice, including systems in which appointments are made by independent commissions with diverse membership

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including judicial, legal, and lay elements, with transparent criteria, public hearings where appropriate, and genuine insulation from both executive and senior judicial political dominance.

The new constitution should also consider the creation of a specialized Constitutional Court, as recommended by various constitutional commissions and as exists in the constitutional systems of Germany, South Africa, and many other constitutional democracies. A Constitutional Court, separate from the ordinary Supreme Court and dealing exclusively with constitutional questions, would develop deeper constitutional expertise, provide more principled constitutional jurisprudence, and be less susceptible to the pressures of a court managing an enormous and diverse docket. The original jurisdiction of the Constitutional Court over constitutional questions would eliminate the current situation in which politically sensitive constitutional petitions can be delayed for years through the management of the court's listing schedule.

IV. The Emergency Power Problem

Perhaps the single most important structural change a new constitution must make is the elimination or radical restriction of the emergency power provisions. The current constitution's three emergency provisions, national emergency under Article 352, President's Rule under Article 356, and financial emergency under Article 360, create a permanent constitutional shadow over the democratic order. Their existence means that the constitutional protections of rights, federalism, and parliamentary governance are always provisional, always subject to suspension if the executive claims the existence of an emergency justification.

A new constitution should take seriously the comparative constitutional evidence that emergency powers, once granted, tend to be used for political purposes rather than only for the genuine emergencies that justify them. The Indian experience with Article 356 is the paradigm case of this problem, but the Emergency of 1975 to 1977 demonstrated the even more catastrophic potential of Article 352. A new constitution should either eliminate emergency powers entirely, as some constitutional scholars have proposed, or restrict them so severely that genuine political misuse becomes constitutionally impossible.

The minimum restrictions necessary to prevent political misuse of emergency powers include: a requirement that emergencies be declared by a supermajority of both houses of Parliament rather than by presidential proclamation; a requirement that the emergency declaration be confirmed by an independent constitutional review body within a very short period; automatic termination of the emergency after a specified period unless renewed by parliamentary supermajority; complete prohibition of the use of emergency powers to interfere with the judiciary, the election commission, or the fundamental rights of citizens beyond those strictly necessary for the specific emergency; and automatic reversal of all emergency measures upon termination of the emergency.

CHAPTER FOURTEEN

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CONCLUSION: THE PEOPLE HAVE NOT YET BEEN GIVEN THEIR CONSTITUTION

I. The Summary of the Indictment

This commentary, spread across twenty parts and thousands of pages, has built an indictment of the Indian constitutional order that can be stated concisely. The Constitution of India was made by an elite in the name of people who did not make it. It incorporated the governance philosophy of the colonial system it replaced. It concentrated power in the executive at the expense of the legislative and judicial branches. It distributed the state's power vertically in ways that systematically disadvantaged poorer and more diverse regions. It proclaimed fundamental rights while qualifying them with exceptions that have been systematically used to suppress the rights themselves. It created social rights provisions that have been treated as aspirations rather than obligations. It built a criminal justice system that disproportionately victimizes the poor, the marginalized, and the politically inconvenient. It authorized emergency powers that have been used as instruments of political control. It failed to constitutionally mandate the decolonization of the administrative, police, and judicial systems it inherited. And it created a framework of constitutional amendment so susceptible to executive manipulation that the document has been changed one hundred and six times in ways that have generally concentrated power rather than distributing it.

The consequences of this constitutional order are visible everywhere that it operates. In the custodial deaths, the UAPA imprisonments, the land acquisitions, the farmer suicides, the Dalit atrocities, the communal violence, the press intimidation, the judicial delays, the police violence, the electoral manipulation, the institutional capture, the media subjugation, the civil society repression, the regional marginalization, and the democratic backsliding that have characterized Indian governance across the post-independence period and have intensified dramatically from 2014 to 2026. These are not the consequences of individual failure or political aberration. They are the systemic consequences of a constitutional order that was designed to govern rather than to serve and that has operated accordingly.

II. The People's Constitution: What it Looks Like

What India needs, and what its people deserve, is a constitution that is genuinely of the people, by the people, and for the people. Such a constitution would look very different from the current document. It would be made through a genuinely participatory process, involving citizens from across India's extraordinary diversity in a deliberate and inclusive constitutional conversation. It would be ratified by a popular referendum in which every citizen has a direct voice in the foundational law of their republic. It would be written in all of India's major languages from the beginning, not translated after the fact from an English original.

Such a constitution would establish rights as genuine protections against state power rather than concessions from state power that can be reclaimed whenever the state decides to. It would create a federal system that genuinely distributes power between the center and the states and between the state and local communities. It would establish the institutions of democratic accountability, the judiciary, the election commission, the anti-corruption bodies, the media

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regulatory framework, with the genuine independence they need to function. It would transform the Directive Principles from aspirations into obligations. It would mandate the decolonization of the police, the bureaucracy, and the judicial system. It would abolish or radically restrict the emergency powers that have been so systematically abused. And it would constitute India's relationship with its neighbors on the basis of democratic accountability and regional partnership rather than executive prerogative.

This is not a utopian vision. It is a democratic vision. The constitutional experiences of South Africa, Germany, and dozens of other countries that have moved from constitutional orders designed for the governance of subjects to constitutional orders designed for the self-governance of citizens demonstrate that this transformation is achievable. What it requires is political will, democratic mobilization, intellectual clarity, and the courage to acknowledge that the constitutional order that has served seventy-six years of Indian independence, whatever its achievements, is not adequate to the demands of a truly sovereign, truly just, truly democratic India.

III. The Role of Constitutional Scholarship

Constitutional scholarship has a specific and important role in the political process of constitutional renewal. Its responsibility is not merely academic documentation but democratic service. The work of constitutional analysis, of uncovering the colonial origins of constitutional provisions, of tracing the mechanisms through which constitutional promises have been systematically emptied, of identifying the structural reforms that genuine constitutional democracy requires, is political work in the best sense: it is work that contributes to the informed democratic deliberation through which a people can reconstitute its own governance.

This commentary has been written in that spirit. It has not sought to be neutral between constitutional justice and constitutional injustice, between democratic self-governance and executive dominance, between the rights of the many and the privileges of the few. It has sought to be rigorous, evidence-based, and analytically transparent while being honest about its normative commitments. The normative commitment that animates every page of this work is the commitment to the proposition that the people of India, in all their diversity, in all their poverty, in all their historical marginalization, deserve a constitutional order that is genuinely theirs.

The Constitution that India has today was a remarkable achievement of its moment, built by remarkable people under conditions of extraordinary difficulty and with intellectual resources that deserve profound respect. But its moment has passed. The conditions it was designed to address, the challenges of national integration, the establishment of democratic institutions in an illiterate and impoverished society, the negotiation of diversity in the aftermath of colonial divide and rule and the trauma of Partition, these challenges have been navigated with whatever imperfection. New challenges have emerged: the digital transformation of governance, the rise of majoritarian nationalism, the crisis of democratic accountability, the ecological emergency, the global restructuring of economic power, the claims of communities that the original constitutional settlement marginalized.

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Meeting these new challenges requires not the cosmetic amendment of an aging document but the democratic reconstruction of constitutional foundations. The people of India have not yet been given their constitution. It is time for them to make one.

IV. A Final Note on Method and Aspiration

The method of this commentary has been to take constitutional law seriously as a domain where ideas, interpretive choices, political interests, and historical contingencies meet and where the outcomes matter enormously to real people's lives. Constitutional scholarship that treats the Indian Constitution merely as a technical legal object, to be analyzed through doctrinal categories without reference to the social and political reality in which it operates, is inadequate to the scale and complexity of what it studies. Constitutional scholarship that focuses only on the gap between constitutional promise and political reality without engaging with the doctrinal and institutional details through which that gap is created and might be closed is also inadequate.

This commentary has sought to combine the rigors of doctrinal legal analysis with the contextual sensitivity of political and social analysis, grounded in the philosophical and jurisprudential traditions that have been most illuminating about constitutional democracy and its failures. The combination is always imperfect. But the aspiration, to contribute to the democratic conversation about what Indian constitutionalism has been, what it is, and what it should become, is both intellectually serious and politically urgent.

The Constitution of India, in its present form, has served its people imperfectly, served its rulers well, and served the colonial heritage it claimed to supersede far too faithfully. The Indian people deserve better. The movement toward a genuinely democratic constitutional order will be long, contested, and uncertain. But it is the only direction in which a genuinely sovereign people can move. Every generation must choose whether to be governed by the inherited arrangements of a colonial past or to constitute themselves anew as the authors of their own political life.

The people of India are ready for that choice. The question is whether the constitutional scholars, the lawyers, the judges, the politicians, the activists, and the citizens who inhabit and operate the constitutional system will find the courage and the vision to make it with them.

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This concludes Part Twenty and the complete commentary: Problems with The Constitution of India: Commentaries, Critiques And Necessary Reforms.

The twenty parts of this work constitute a systematic jurisprudential, historical, philosophical, and political analysis of the Indian constitutional order and the arguments for its fundamental transformation. The author acknowledges the extraordinary richness and complexity of the Indian constitutional tradition, the genuine achievements of constitutional democracy in India, and the equally genuine and profound failures that have accompanied those achievements. The aspiration of this work is to contribute, with intellectual rigor and democratic commitment, to the conversation through which the people of India may one day give themselves a constitutional order that is truly, fully, and irrevocably their own.

PART TWENTY-ONE (Extra Part): THE CONSTITUTION WE DESERVE

A Draft Constitution for a Renewed Indian Republic

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Jurisprudential Commentary, Philosophical Foundations, and the Complete Text of a Proposed New Constitutional Order

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PREFACE TO PART TWENTY-ONE

The twenty parts of this commentary have done something that Indian constitutional scholarship has been reluctant to do openly and systematically: they have looked at the Constitution of India not as a sacred text to be interpreted and defended but as a historical document to be analyzed, judged by its consequences, and, where those consequences have been unjust, replaced. The analysis has been conducted in the spirit of what Ambedkar himself wrote in his last speech to the Constituent Assembly: that a constitution is a living instrument, that its worth depends entirely on the people who operate it and the institutions that give it meaning, and that if those people and institutions fail, the constitution itself must answer for the failure.

This final part takes the argument to its logical destination. It is not sufficient to diagnose constitutional failure. It is not sufficient to catalog the ways in which the colonial architecture of the Constitution has been used to concentrate power, suppress dissent, victimize the poor, marginalize minorities, and frustrate the democratic aspirations of the Indian people. The diagnostic work, however rigorous and however necessary, is not the end of the jurisprudential enterprise. The end of the enterprise is to answer the constructive question: what should the Constitution of India say, and how should it be structured, if it is to serve the people of India rather than govern them?

This part offers a complete draft of a proposed new Constitution for India. The draft is accompanied by jurisprudential commentary explaining the reasoning behind each major structural choice. The commentary draws on the theoretical frameworks developed throughout this textbook: critical legal studies, postcolonial jurisprudence, Ambedkarite social constitutionalism, Rawlsian distributive justice, republican constitutional theory, deliberative democratic theory, and the comparative constitutional scholarship of the early twenty-first century.

The draft is not presented as a final or complete text ready for adoption. It is presented as a framework for democratic deliberation, a contribution to the conversation that the Indian people have a right and a responsibility to have about the fundamental law under which they choose to be governed. The detailed provisions are intended to provoke discussion, disagreement, and improvement. They are grounded in the analytical conclusions of the twenty preceding parts of this work, and they represent, in the view of the author, the minimum structural transformation that would be necessary to convert India from a constitutional democracy in form to a constitutional democracy in substance.

Several foundational premises guide the entire draft. First, the draft is based on the premise that sovereignty belongs to the people in a real sense, not merely as a formal declaration in a preamble, but as an operative constitutional principle that shapes the structure of every institution. Second, the draft is based on the premise that equality is not merely formal but

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substantive, requiring active constitutional commitment to the elimination of structural inequality based on caste, gender, religion, class, language, and region. Third, the draft is based on the premise that federalism is not a matter of administrative convenience but a constitutional commitment to genuine self-governance at multiple levels. Fourth, the draft is based on the premise that constitutional rights are meaningless without institutions and procedures adequate to their enforcement. Fifth, the draft is based on the premise that constitutional democracy requires institutions that are genuinely independent of partisan political control, including an electoral system, a judiciary, a civil service, and a media environment that can sustain genuine democratic deliberation.

The draft proceeds systematically through the major areas where the existing Constitution has failed, building a new architecture for each. It is written in clear, accessible language, because a constitution that only lawyers can understand is, for most citizens, not really their constitution at all.

No punctuation shall obscure the argument. No dashes shall divide what clarity requires to connect.

CHAPTER ONE: FOUNDATIONS OF THE NEW CONSTITUTIONAL ORDER

1.1 The Question of Constitutional Moments and Why India's Has Arrived

In constitutional theory, a "constitutional moment" is a period when the normal constraints of political possibility are suspended, when the people of a polity are genuinely open to fundamental reconsideration of the basic terms of their shared governance. Bruce Ackerman's theory of constitutional moments, developed in his three-volume work "We the People," identifies such moments as rare, transformative, and constitutive: they are the moments when a people actually exercise their sovereignty in the deepest sense, by reconstituting the framework within which all subsequent political action takes place.

India's first constitutional moment was the period 1946 to 1950, when the Constituent Assembly drafted and adopted the Constitution. As this commentary has argued throughout, that moment was structurally compromised: the Constituent Assembly was not representative of the Indian people, the drafting process took place under the shadow of colonial administrative necessity and the trauma of Partition, and the resulting document bore the unmistakable imprint of the colonial order it claimed to supersede.

The argument of this part is that India's second constitutional moment is now upon it. The evidence for this claim is both negative and positive. Negatively, the failures of the existing constitutional order have reached a level of visibility and systemic depth that make incremental reform inadequate. The electoral bonds case of 2024, the sustained documentation of democratic backsliding by international democracy monitoring organizations, the crisis of judicial credibility, the normalization of preventive detention against civil society, the systematic deployment of constitutional institutions against elected state governments of the opposition, the

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failure of fifty million pending cases to resolve themselves, the persistence of manual scavenging despite legal prohibition, the continuing dispossession of tribal communities, the violence against dalit citizens that occurs daily and is mostly invisible to constitutional institutions, these are not the failures of particular governments or particular political choices. They are structural failures of the constitutional order itself.

Positively, the civic, intellectual, and democratic resources for constitutional transformation are available in India to a degree that was not available in 1946. Literacy rates have risen dramatically. Civil society organizations across India have developed sophisticated understandings of constitutional rights and their failures. Legal aid networks, digital communications, and social movements have created new possibilities for democratic deliberation. The constitutional jurisprudence developed by the Supreme Court, whatever its institutional failures, has created a rich tradition of constitutional reasoning on which a new constituent process could draw. The global comparative constitutional scholarship of the early twenty-first century provides a vastly richer toolkit of institutional designs than was available to the framers of 1946.

1.2 The Process of Constitutional Renewal: How the New Constitution Should Be Made

Before presenting the draft text, the commentary must address a prior question that is both theoretical and practical: how should the new Constitution be made, and by whom?

The answer proposed here has several components.

The constituent process must be genuinely representative. A new Constituent Assembly should be elected by universal suffrage, on the basis of proportional representation, with mandatory representation for women (at least fifty percent), for scheduled castes and scheduled tribes (in proportion to their population), for other backward classes, for linguistic minorities, for religious minorities, and for persons with disabilities. The result would be an assembly that actually reflects the demographic composition of the Indian people.

The drafting process must be participatory. The Constituent Assembly should not draft the constitution in isolation from the people it represents. It should be required to conduct extensive public consultations in every state and union territory, including in tribal areas, in urban slums, in coastal fishing communities, in agricultural regions, and among the urban poor. It should receive written submissions from all citizens and organizations. It should commission independent expert studies on specific constitutional questions. And it should publish all its deliberations in all scheduled languages.

The resulting draft must be ratified by the people directly. A new constitution must derive its authority not merely from the Constituent Assembly that drafts it but from a direct popular referendum in which every adult Indian citizen has the opportunity to vote on whether to adopt it. This requirement of popular ratification is the most important procedural safeguard against the recurrence of an elite constitutional drafting process that produces a document remote from popular sovereignty.

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The transition must be managed carefully. The existing Constitution should continue to operate during the constituent process, but the process should be protected from interference by the incumbent government. The Election Commission, the Supreme Court, and the Comptroller and Auditor General should play supervisory roles in ensuring the integrity of the constituent process.

1.3 The Theoretical Architecture of the Draft: Key Innovations

The draft constitution proposed in this part represents several departures from the existing constitutional framework. The most significant innovations are summarized here before the draft text is presented.

First, the draft converts the Directive Principles of State Policy from non-justiciable aspirations into justiciable fundamental rights. The distinction between civil and political rights (justiciable) and social and economic rights (non-justiciable) that characterized the 1950 Constitution has been widely criticized in comparative constitutional scholarship and has been abandoned by many newer constitutions, including the South African Constitution of 1996, which provides justiciable socioeconomic rights. The draft follows this trajectory.

Second, the draft establishes genuine cooperative federalism. It reforms the distribution of fiscal powers, creates a new intergovernmental council with real authority, restricts the use of Governor's powers, limits the power of the Centre to impose its will on states, and entrenches the right of states to conduct their own governance free from central interference except in specifically defined circumstances.

Third, the draft creates a reformed electoral system that uses a combination of constituency representation and proportional representation to ensure that the composition of the legislature more accurately reflects the preferences of the voters.

Fourth, the draft creates reformed judicial appointment and accountability mechanisms that ensure that the judiciary is both independent of political pressure and accountable to democratic standards of transparency, diversity, and competence.

Fifth, the draft constitutionalizes the political party system, requiring parties to meet democratic standards of internal governance, financial transparency, and accountability.

Sixth, the draft creates robust anti-corruption and accountability institutions that are genuinely independent of the executive government.

Seventh, the draft provides for a reformed emergency power framework that makes the declaration of emergency genuinely exceptional, subject to multi-stage approval and independent judicial oversight.

Eighth, the draft creates a reformed framework for the police and security services, ending the colonial structure of the 1861 Police Act and establishing constitutional standards for the operation of law enforcement that respect the dignity and rights of all citizens.

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Ninth, the draft includes explicit provisions on environmental rights and the obligations of the state and citizens toward future generations.

Tenth, the draft creates a comprehensive framework for international relations that provides democratic oversight of foreign policy and integrates India's international human rights obligations into domestic constitutional law.

CHAPTER TWO: THE DRAFT CONSTITUTION OF THE REPUBLIC OF INDIA

Proposed: The Constitution of the Indian Republic (Draft for Democratic Deliberation)

PREAMBLE

We, the People of India, in solemn recognition of our sovereignty and our responsibility to one another and to those who will come after us, recalling the centuries of struggle against colonialism, caste oppression, feudal exploitation, and imperial subjugation, honoring the memory of all those who gave their lives, their freedom, and their labor in the service of justice and liberation, acknowledging the extraordinary diversity of our languages, faiths, cultures, and histories as our greatest collective inheritance, and accepting the obligations of solidarity, equality, and care that this diversity demands of us, do hereby constitute the Indian Republic upon the following principles:

That all sovereign power belongs to the people of India, that this power may only be exercised through institutions that the people create, accountable mechanisms that the people control, and amendments that the people approve;

That every person born or naturalized in India is equal in dignity and in rights, that no discrimination based on caste, sex, gender, sexual orientation, religion, language, region, economic condition, disability, or ethnic origin is permissible in any sphere of public or private life regulated by law;

That the material conditions necessary for a dignified human life, including adequate food, shelter, healthcare, education, clean water and air, secure livelihood, and participation in cultural life, are rights of every person and obligations of the state;

That the state is the servant of the people, not their master, that every exercise of public power is a trust given by the people for the people's benefit, and that every holder of public power is accountable to the people for its exercise;

That India is a federal, secular, democratic, socialist, and environmental republic, in which power is distributed among the people, the local self-government institutions, the state governments, and the Union government in accordance with the principle of subsidiarity,

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meaning that decisions should be made at the lowest level of government that is competent to make them effectively;

That the Republic of India commits itself to international peace, to the peaceful resolution of disputes, to the observance of international law and the international human rights framework, and to cooperative relationships with its neighbors founded on respect, reciprocity, and the shared interests of all peoples;

And that this Constitution, adopted by the free and sovereign will of the Indian people through their elected representatives and confirmed by direct democratic referendum, is the supreme law of the land, binding upon all institutions of government, all persons, and all associations, and that no law, policy, executive action, or judicial decision that is inconsistent with it shall have any force or effect.

With this understanding and in this spirit, we, the People of India, give ourselves this Constitution.

PART I: THE REPUBLIC AND ITS TERRITORY

Article 1: Name and Nature of the Republic

India, known also as Bharat and by the names given to it in each of the scheduled languages of the Constitution, is a federal, secular, democratic, socialist, and environmental republic. India is indestructible as a Union, but the federal character of the Union, meaning the genuine autonomy of states and local governments within their spheres of authority, is a fundamental feature of the constitutional order and may not be diminished by constitutional amendment.

Article 2: Territory

The territory of the Indian Republic comprises the territories of the states, the union territories as specified in the First Schedule, and any other territory that may be acquired in accordance with international law. No territory of the Indian Republic may be ceded to a foreign state except by a constitutional amendment passed by a two-thirds majority of both houses of Parliament and ratified by the legislatures of not less than half the states, provided that such cession is also confirmed by a national referendum in which a majority of votes cast favor the cession.

Article 3: Alteration of States and Union Territories

Parliament may, by law passed with a simple majority and with the prior consent of the state or states affected, form a new state, increase or diminish the area of any state, alter the boundaries of any state, or alter the name of any state. A law affecting the territory or boundaries of a state shall not be passed without prior consultation with the legislature of the state affected and without giving that legislature an adequate opportunity to express its views. The prior consent of the state legislature shall be required for any reduction in the territory of a state.

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Article 4: Admission of New States

Parliament may, by a law passed with a two-thirds majority of each house, admit new states into the Union upon such terms and conditions as Parliament may prescribe, provided that any such law shall specify the rights and powers of the new state and shall not diminish the rights and powers of any existing state.

PART II: CITIZENSHIP

Article 5: Citizenship

Every person born in India is a citizen of India by birth, regardless of the religion, caste, language, or national origin of their parents. Citizenship by birth is the fundamental basis of Indian citizenship and may not be qualified or restricted on the basis of religion.

Every person born outside India to at least one parent who is a citizen of India is a citizen of India by descent, as provided by law.

Citizenship may be acquired by naturalization as provided by law, on the basis of residence, integration, and commitment to the constitutional values of the Republic. The law governing naturalization shall not discriminate on the basis of religion, caste, national origin, language, or region of origin.

Citizenship is equal for all citizens. No citizen of India shall be denied any right guaranteed by this Constitution or by law on the ground of the manner in which their citizenship was acquired.

Article 6: Termination of Citizenship

A citizen of India may renounce their citizenship. Citizenship shall not be involuntarily terminated except as provided by law, and no person shall be rendered stateless by the termination of Indian citizenship. The law governing termination of citizenship shall provide for judicial review of all decisions to terminate citizenship.

Article 7: Rights of Permanent Residents

Persons who are not citizens of India but who are lawfully resident in India on a permanent basis shall be entitled to the protections of this Constitution as regards life, dignity, freedom from arbitrary detention, and equal treatment before the law, to the extent provided in Part III of this Constitution.

PART III: FUNDAMENTAL RIGHTS

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Article 8: Interpretation of Fundamental Rights

The fundamental rights guaranteed in this Part are directly enforceable before every court in India. Every court in India is required, in interpreting legislation and in determining the obligations of the state, to give effect to the fundamental rights and to adopt interpretations that advance rather than restrict the realization of those rights.

The fundamental rights guaranteed in this Part form an integrated whole. No right shall be interpreted in isolation from the others. Every limitation on a fundamental right must be proportionate, necessary in a democratic society, and consistent with the core values of human dignity, equality, freedom, and solidarity that inform the entire Part.

No fundamental right may be abrogated by constitutional amendment. The content and scope of fundamental rights may be expanded by constitutional amendment or by legislative action in conformity with the Constitution, but the core substance of each right is permanent and unamendable.

Article 9: Right to Equality and Non-Discrimination

Every person is equal before the law and is entitled to equal protection and equal benefit of the law. The state shall not discriminate against any person on grounds of religion, race, caste, sex, gender identity, sexual orientation, place of birth, language, disability, economic condition, or any other status.

Discrimination includes direct discrimination, indirect discrimination (policies or practices that are neutral on their face but have a disproportionately adverse effect on persons sharing a protected characteristic without adequate justification), harassment, and the failure to provide reasonable accommodation for persons with disabilities.

The right to equality does not preclude special measures designed to achieve substantive equality for persons and groups who have been historically disadvantaged. Such special measures shall be designed, implemented, and reviewed in a manner that promotes rather than perpetuates disadvantage, and they shall be continued as long as the conditions that justify them persist.

The state shall take active and systematic measures to eliminate discrimination and to advance substantive equality in all spheres of life, including employment, education, healthcare, housing, access to public services, and participation in public life.

Article 10: Right to Life and Dignity

Every person has the right to life, to bodily integrity, and to dignity. This right includes:

The right not to be arbitrarily deprived of life. The death penalty is abolished. No person shall be executed by the state under any circumstances.

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The right to freedom from torture, cruel, inhuman, or degrading treatment or punishment. This prohibition is absolute and may not be overridden under any circumstances, including emergency conditions.

The right to bodily autonomy, including the right of every person to make decisions about their own body, health, and reproductive choices.

The right to a standard of living adequate for dignity, including adequate food, water, shelter, healthcare, and clothing.

The right to live free from violence, including domestic violence, sexual violence, and violence by state agents.

Article 11: Right to Freedom

Every person has the right to freedom, comprising the following liberties:

The right to freedom of thought, conscience, belief, and religion. Every person has the right to adopt, practice, manifest, or change their religion or belief, privately or in community with others. No person shall be compelled to profess or practice any religion or to perform religious observances. Freedom of religion does not protect practices that violate the rights of others or that are inconsistent with the dignity, equality, and freedom of all persons.

The right to freedom of expression, including freedom of the press and of other media. This right includes the right to seek, receive, and impart information and ideas through any medium. Limitations on freedom of expression must be prescribed by law, must pursue a legitimate purpose, must be proportionate to that purpose, and must not be used to suppress political dissent, criticism of public officials or institutions, or the expression of minority viewpoints.

The right to peaceful assembly and to freedom of association, including the right to form and join political parties, trade unions, and other civil society organizations.

The right to move freely throughout India and to reside and settle in any part of India.

The right to practice any profession, trade, or occupation, subject to professional qualifications prescribed by law.

The right to privacy, including informational privacy, bodily privacy, locational privacy, and relational privacy. Surveillance of citizens by the state or by private entities must be authorized by a specific law, must be proportionate to the purpose pursued, and must be subject to independent judicial oversight.

Article 12: Rights of Arrested and Detained Persons

Every person who is arrested shall be informed immediately of the grounds of their arrest, shall be informed of their right to legal counsel, and shall have access to legal counsel of their

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choosing without delay. Where a person cannot afford legal counsel, the state shall provide legal counsel at public expense.

No person shall be detained without being produced before a judicial authority within twenty-four hours of arrest. A judicial authority before whom a detained person is produced shall inquire into the lawfulness of the detention and shall release the person if the detention is unlawful.

No person shall be detained without charge for more than forty-eight hours except upon the order of a court, which may authorize continued detention for specified periods subject to judicial review at intervals of not more than fifteen days.

Preventive detention, meaning detention without charge on the basis of a subjective assessment of risk to public order or national security, is prohibited. Any person detained must be charged with a specific offense within forty-eight hours or released. This provision may not be suspended in any circumstances, including during a state of emergency.

Every person who is detained shall be treated with humanity and with respect for the dignity inherent in the human person. Torture and cruel, inhuman, or degrading treatment or punishment are absolutely prohibited. Any evidence obtained by torture or other prohibited means is inadmissible in any proceedings.

Every person charged with a criminal offense has the right to a fair and public trial within a reasonable time, the right to be presumed innocent until proven guilty, the right to examine witnesses, the right to legal counsel, the right to interpretation in a language they understand, and the right to remain silent without adverse inference being drawn from that silence.

Article 13: Socioeconomic Rights

Every person has the following socioeconomic rights, which are justiciable and directly enforceable before courts:

The right to healthcare, including the right to access essential healthcare services without financial hardship. The state shall progressively realize universal healthcare coverage, giving priority to the healthcare needs of the poor, the marginalized, and those in remote areas.

The right to education, including the right to free, compulsory, and quality education from early childhood through the completion of secondary education. Every child has the right to education in their mother tongue at the primary level. The state shall establish and maintain a system of public education adequate to realize this right for all children.

The right to adequate housing. No person shall be forcibly evicted from their home without adequate prior notice, meaningful consultation, provision of alternative accommodation, and access to judicial review. Forced evictions carried out without these protections are unconstitutional.

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The right to food and water. Every person has the right to access adequate, safe, and nutritious food and to access safe drinking water. The state shall take active measures to eliminate hunger and to ensure food security for all.

The right to social security. Every person has the right to social security, including social insurance against sickness, old age, and disability, and to a universal basic minimum income that ensures no person lives in conditions of absolute poverty.

The right to work, including the right to just and favorable conditions of work, to equal pay for equal work regardless of gender, caste, or religion, to safe working conditions, to rest and reasonable hours, and to join trade unions.

The right to participate in cultural life, including the right to education in and use of one's language, the right to practice and transmit one's cultural heritage, and the right to access scientific and cultural knowledge.

Article 14: Rights of Marginalized Communities

Scheduled Castes and Scheduled Tribes shall have the right to proportionate representation in all organs and institutions of the state, in educational institutions, and in public employment, as prescribed by law. This right of proportionate representation is a fundamental right and may not be eliminated by constitutional amendment.

The practice of untouchability in any form is absolutely prohibited and shall be an offense punishable by law. The state shall take active and systematic measures to eradicate caste-based discrimination in all spheres of public and private life.

Adivasi and tribal communities shall have the right to their lands, territories, and natural resources, to their cultural identity, to self-governance in accordance with their own customs and traditions, to free, prior, and informed consent before the state takes any action affecting their lands, territories, or resources, and to the development of their communities in accordance with their own priorities and values. No acquisition of tribal land shall be lawful without the free, prior, and informed consent of the community whose land is to be acquired.

Religious and linguistic minorities shall have the right to establish and maintain their own educational institutions, to receive state support for those institutions on a non-discriminatory basis, to practice and transmit their religion and culture, and to use their language in dealings with the state in areas where they constitute a significant portion of the population.

Women and gender non-conforming persons shall have the right to equality in all spheres, to freedom from sexual and gender-based violence, to reproductive autonomy, to equal representation in political institutions, to equal pay, and to freedom from practices that are harmful to their dignity or health. Practices including child marriage, dowry, and female genital mutilation are prohibited and shall be punishable by law.

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Children have the right to a name and nationality, to family care or alternative care, to basic nutrition, shelter, health, and education, to be protected from economic and social exploitation, and to be protected from abuse and neglect. The best interests of the child shall be a primary consideration in all actions concerning children taken by public or private institutions.

Persons with disabilities have the right to equality, to full participation in all aspects of society, to reasonable accommodation, and to a barrier-free physical and information environment. The state shall take measures to progressively realize these rights.

Article 15: Right to a Clean Environment

Every person has the right to an environment that is not harmful to their health or dignity. This right includes the right to clean air, clean water, and a stable climate. The state shall take all necessary legislative and other measures to achieve the progressive realization of this right.

The state and all persons have the duty to protect and promote the environment for the benefit of present and future generations. The polluter pays principle, the precautionary principle, and the principle of intergenerational equity shall guide all environmental law and policy.

Nature has the right to have its processes of self-regulation, regeneration, and evolution protected and respected. Ecosystems of particular ecological significance, including forests, rivers, wetlands, and coastal zones, shall be recognized as legal persons for the purposes of environmental protection.

Article 16: Rights in the Digital Environment

Every person has the right to access the internet and digital communications infrastructure on a non-discriminatory basis. The state shall take measures to ensure universal access to digital infrastructure, with particular attention to rural areas, tribal areas, and other underserved communities.

Every person has the right to digital privacy, including the right to personal data protection. Personal data may be collected and processed only with the informed consent of the data subject, except as provided by law in specifically defined circumstances and with judicial oversight. Every person has the right to access, correct, and delete their personal data.

Artificial intelligence systems used by the state shall be transparent, explainable, and non-discriminatory. Their use in decisions affecting fundamental rights shall be subject to judicial review.

Article 17: Enforcement of Fundamental Rights

Every person has the right to effective legal protection for their fundamental rights before a court of law. This right includes the right to bring a constitutional petition directly before a High Court or the Supreme Court for the enforcement of any fundamental right guaranteed by this Constitution.

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Constitutional litigation shall be made accessible to all. The state shall provide free legal assistance to any person who is unable to afford legal representation in fundamental rights proceedings. Filing fees shall not be charged in fundamental rights proceedings.

Courts shall grant effective remedies for violations of fundamental rights, including injunctions, declarations, orders for specific performance of constitutional obligations, and damages. Courts shall have the power to issue structural injunctions requiring the state to take specific measures to realize socioeconomic rights, and shall supervise the implementation of such injunctions.

Class action constitutional petitions may be filed on behalf of groups of persons whose fundamental rights have been collectively violated. Public interest litigation, in which any person may petition a court to vindicate fundamental rights on behalf of those who cannot access the courts themselves, shall be maintained and strengthened.

PART IV: FUNDAMENTAL DUTIES

Article 18: Duties of Citizens and Residents

Every citizen and permanent resident of India has the following duties:

To abide by the Constitution and to respect its values and institutions.

To defend the Republic and render service to it when called upon.

To promote harmony and the spirit of fraternity among all sections of the people, transcending differences of religion, language, region, and caste.

To value and preserve the rich heritage of India's composite culture.

To protect the natural environment.

To develop a scientific temper, humanism, and the spirit of inquiry and reform.

To safeguard public property and not to engage in violence.

To strive toward excellence in all spheres of individual and collective activity.

To respect the dignity and rights of all persons, including the right of every person to be free from discrimination based on caste, sex, religion, and other prohibited grounds.

To pay taxes in accordance with the law and to contribute to the public resources necessary for the realization of the rights guaranteed by this Constitution.

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These duties shall not be used as grounds for the restriction of any fundamental right. The duties are obligations of citizenship and residence, but their violation shall not give rise to criminal liability except as specifically provided by law passed with adequate procedural safeguards.

PART V: THE FEDERAL REPUBLIC

Article 19: Federal Principles

The Indian Republic is a federation of states, governed by the following principles:

The principle of subsidiarity: decisions shall be made at the lowest level of government that is competent to make them effectively. Power flows upward from the people to local self-government, from local self-government to the states, and from the states to the Union, and is delegated from the people to each level for specific purposes.

The principle of cooperative federalism: the Union, the states, and local self-government institutions shall cooperate with one another in the discharge of their constitutional responsibilities, shall share resources equitably, and shall resolve disputes through negotiation and the mechanisms provided in this Constitution.

The principle of fiscal autonomy: each level of government shall have adequate fiscal resources to discharge its constitutional responsibilities independently, and the fiscal relationship between levels of government shall be governed by transparent, rule-based, and equitable formulas.

The principle of democratic accountability: every level of government shall be directly accountable to the people through free and fair elections and through the mechanisms of transparency and accountability provided in this Constitution.

Article 20: Distribution of Legislative Powers

The distribution of legislative powers between the Union and the states shall be as follows.

The Union alone may legislate on: defense and the armed forces, foreign affairs, diplomatic and consular relations, citizenship and naturalization, inter-state trade and commerce, currency and banking and finance, income tax and corporate tax, customs and import duties, atomic energy, railways and national highways and airways, the regulation of major ports, communications including post and telegraphs and telecommunications, and any other matter that by its nature requires uniform national regulation.

States alone may legislate on: public order, police and law enforcement, public health, agriculture and irrigation and land management, local government, education at the primary and secondary levels, labor and industrial relations within the state (subject to nationally applicable minimum standards), state taxation and state revenues, fisheries, libraries and museums, and other matters of primarily local or regional concern.

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Both the Union and the states may legislate on: criminal law and procedure, civil procedure, marriage and family law, social security, environmental protection, higher education, trade and commerce within the state, electricity and energy, forest management, and other matters listed in the Concurrent List of the Third Schedule.

In matters on the Concurrent List, where Union legislation and state legislation conflict, the Union legislation shall prevail, except where the state legislature has expressly declared that the state legislation is intended to prevail and the President has given assent to the state legislation on the advice of the Council of Ministers.

Parliament shall not legislate on State List subjects except with the consent of a majority of the State Legislatures, or unless the Inter-governmental Council established by this Constitution certifies that the matter has transcended state boundaries and requires national coordination.

Article 21: Fiscal Federalism

The fiscal relationship between the Union and the states shall be governed by the following principles.

Vertical fiscal balance: the proportion of nationally collected revenues allocated to states shall be sufficient to enable the states to discharge their constitutional responsibilities without dependence on discretionary grants from the Union. The Finance Commission shall recommend a formula for vertical fiscal sharing that gives states adequate fiscal autonomy, and the Union shall be bound to implement the Finance Commission's recommendations.

Horizontal fiscal equalization: the formula for allocating nationally collected revenues among the states shall take into account both the revenue-generating capacity of each state and the expenditure needs of each state, so that states with lower capacities and greater needs receive a larger share.

State revenue autonomy: states shall have the power to levy taxes on land, property, professions, state goods and services, and other matters within their constitutional sphere. The Union shall not levy taxes on matters reserved for state taxation.

Grants: the Union may make grants to states for specific purposes, but grants shall not be conditioned on state compliance with Union policies in matters that fall within the exclusive legislative competence of the states. No centrally sponsored scheme shall be implemented in a state without the consent of the state government.

Article 22: The Governor

The Governor of each state shall be elected by the members of the state legislature by secret ballot, for a term of five years. The Governor shall not be a member of any political party from the date of election to the office of Governor and shall hold no office of profit under any government.

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The Governor shall act on the advice of the Council of Ministers of the state in the exercise of all executive functions, subject only to the specific exceptions provided in this Constitution.

The Governor shall not have any power to dissolve the state legislature except on the advice of the Chief Minister, or to refer a Bill passed by the state legislature to the President except in specifically defined circumstances, or to withhold assent to a Bill passed by the state legislature for a period exceeding thirty days. If the Governor does not act on a Bill within thirty days, the Bill shall be deemed to have received assent.

The discretionary powers of the Governor shall be limited to the following: appointing the Chief Minister in the specific circumstance where no party or coalition commands a clear majority in the state assembly, and where a floor test is the appropriate mechanism for establishing majority support; certifying to the Supreme Court that a constitutional crisis in the state requires the attention of the court; and transmitting to the Inter-governmental Council any state government decision that the Governor believes may violate the constitutional rights of any community in the state. All other actions of the Governor shall be taken on the advice of the Council of Ministers.

The Governor may be removed by a resolution passed by two-thirds of the members of the state legislature.

Article 23: Emergency in States

The President's Rule over a state, meaning the assumption of the administration of a state by the Union, shall be imposed only in the following circumstances, and in no others:

Where a state is so severely affected by armed rebellion, external aggression, or a natural disaster of exceptional magnitude that it is incapable of conducting its own governance and the state government has requested central assistance.

Where a state government has been convicted by a court of systematic violations of the fundamental rights of its citizens of such gravity and scale that the Supreme Court certifies to the President that the constitutional order of the state has been fundamentally compromised.

In neither case shall President's Rule be imposed without the prior approval of a special committee of Parliament comprising representatives of both houses and including the leaders of the principal opposition parties, and without the simultaneous initiation of proceedings before the Supreme Court to verify the constitutional basis for the imposition.

President's Rule shall last for no more than six months unless Parliament by a two-thirds majority and the Supreme Court by unanimous decision certify that the conditions justifying it continue to exist.

President's Rule may not be imposed for the purpose of destabilizing a state government that has lost the political support of the Union government.

Article 24: Intergovernmental Relations

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An Intergovernmental Council shall be established as a constitutional institution comprising the Prime Minister of India, all Chief Ministers of the states, and the Chief Ministers of all union territories with legislatures. The Council shall meet at least four times a year and shall be chaired by the Prime Minister.

The Intergovernmental Council shall: coordinate the activities of the Union and the states in matters on the Concurrent List; discuss disputes between the Union and the states and between states; deliberate on proposed Union legislation that affects the states; review the implementation of the Finance Commission's recommendations; and address any other matter referred to it by the Union or any state government.

The Council shall operate on the basis of consensus wherever possible. Where consensus is not achievable, decisions shall be made by a majority of the Chief Ministers present.

PART VI: DIRECTIVE PRINCIPLES OF PEOPLE-CENTERED GOVERNANCE

Article 25: Status and Nature

The Directive Principles of People-Centered Governance contained in this Part supplement the Fundamental Rights guaranteed in Part III. Unlike the Directive Principles of the previous Constitution, the principles in this Part are justiciable to the extent that they impose specific obligations on the state to progressively realize defined outcomes, and courts may issue orders to the state to take specific measures in furtherance of these principles.

Article 26: Economic Justice

The state shall direct its policy toward securing, for all citizens, a social order in which the material conditions of a dignified life are available to all. This includes: progressive reduction in economic inequality, with the aim of ensuring that the difference in living standards between the most affluent and the least affluent does not threaten social solidarity; adequate wages for all workers, including a national minimum wage that is adjusted annually in accordance with the cost of living; protection against economic exploitation; the prevention of the concentration of ownership of natural resources, means of production, and financial wealth in the hands of a few; and progressive taxation adequate to fund the social rights guaranteed in Part III.

Article 27: Democratic Governance

The state shall take active measures to promote genuine participation of citizens in governance, including through participatory budgeting at the local level, public consultations on major legislative and policy decisions, freedom of information, the protection of whistleblowers, and the establishment of independent citizens' oversight bodies for major public institutions.

Article 28: Rule of Law and Anti-Corruption

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The state shall take all necessary measures to ensure that the rule of law is uniformly enforced and that corruption in public life is systematically combated. This includes: the maintenance of an independent and adequately resourced anti-corruption commission with powers to investigate, prosecute, and recommend systemic reforms; mandatory asset disclosure for all holders of public office; criminal liability of corporations for corruption committed in their interest; and international cooperation in the recovery of assets stolen from the public.

Article 29: Scientific and Technological Development

The state shall promote scientific education, scientific temper, and evidence-based public policy. The state shall fund independent scientific research and shall not impede or censor the communication of scientific findings, including findings that challenge official policy. Public health, environmental, and educational policy shall be guided by the best available scientific evidence.

PART VII: THE UNION EXECUTIVE

Article 30: The President

The President of India is the constitutional head of the Indian Republic and the symbol of its unity. The President shall be elected by a direct popular vote of all citizens of India, for a non-renewable term of five years. The President shall hold no office of profit under the government and shall not be a member of any political party.

The President shall act in accordance with the Constitution and shall exercise all functions conferred on the President in conformity with the advice of the Prime Minister and the Council of Ministers, except in the specific circumstances described in this Part.

The President shall have the following independent constitutional functions: to certify that a constitutional amendment has been passed in conformity with the procedure required by this Constitution; to refer any legislation that the President believes is unconstitutional to the Supreme Court for its opinion before giving assent; to summon the Council of Constitutional Order in circumstances provided in this Constitution; and to appoint the Prime Minister in the specific circumstances where the parliamentary result requires the exercise of independent judgment.

Article 31: The Prime Minister and Council of Ministers

The Prime Minister is the head of the Union executive and the leader of the government. The Prime Minister shall be the member of the House of the People who commands the confidence of a majority of the members of that house.

The Council of Ministers, comprising the Prime Minister and other ministers, is collectively responsible to the House of the People. If the House of the People passes a vote of no confidence

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in the Council of Ministers by a majority of its members, the Council of Ministers shall resign. A vote of no confidence shall be valid only if it is accompanied by a constructive vote of confidence in an alternative Prime Minister, which is to say that the House of the People may only remove one government if it simultaneously designates a successor. This constructive vote of no confidence is designed to ensure governmental stability without protecting governments that have permanently lost parliamentary support.

The Prime Minister shall not hold more than two terms in office. The Council of Ministers shall not exceed thirty members in total, of whom at least one-third shall be women. The Council of Ministers shall broadly represent the regional, linguistic, caste, religious, and gender diversity of India.

Ministers shall be accountable individually for their portfolios and collectively for all decisions of the Council. No minister shall continue in office if convicted of a criminal offense for which the punishment is imprisonment.

Article 32: The Prime Minister's Office

The Prime Minister's Office shall operate as a coordinate and support institution for the Prime Minister, not as a parallel government. The PMO shall not direct or override the functioning of ministries. The officers of the PMO shall be drawn from the civil service and shall be accountable through normal civil service channels. No officer of the PMO shall exercise public power independently of a designated minister who is accountable to Parliament.

Article 33: Cabinet Government and Parliamentary Accountability

The Council of Ministers shall meet at least twice per month and shall take all major governmental decisions collectively. The minutes of Cabinet meetings shall be recorded and made available to Parliament upon request, subject only to specific exclusions on grounds of national security certified by the Supreme Court.

The Prime Minister and every minister shall attend Parliament regularly and shall answer questions from members on all matters within their responsibility. The Council of Ministers shall present a comprehensive annual report to Parliament on the implementation of the government's program. Parliament shall have the right to summon any officer of the government to give evidence before a parliamentary committee.

PART VIII: THE UNION LEGISLATURE

Article 34: The Parliament of India

The Parliament of India shall comprise the House of the People (Lok Sabha) and the Council of States (Rajya Sabha). Parliament shall be the supreme legislative institution of the Union and shall be responsible for making laws on Union and Concurrent List subjects, for approving the

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Union Budget, for holding the government accountable, and for deliberating on all matters of public policy that affect the Indian people.

Article 35: The House of the People

The House of the People shall consist of 800 members, elected from 400 single-member territorial constituencies and 400 seats allocated by proportional representation on the basis of closed lists submitted by political parties. The seats allocated by proportional representation shall be allocated to parties in proportion to the total votes received nationally, ensuring that the overall composition of the House more accurately reflects the national preference of voters.

Of the 400 constituency seats, at least 33 percent shall be reserved for women candidates, as allocated by a rotation system that designates specific constituencies as women-only constituencies in each general election. Parties submitting lists for the proportional representation component shall alternate women and men throughout the list.

The term of the House of the People shall be five years from the date of its first sitting after a general election. The House may not be dissolved before the expiry of five years except upon a constructive vote of no confidence as provided in this Part.

Article 36: The Council of States

The Council of States shall consist of 12 members from each state regardless of population, plus 2 members from each union territory with a legislature. The members of the Council of States shall be elected directly by the voters of each state through a proportional representation system, for a term of six years, with one-third of the seats of each state rotating every two years.

The Council of States shall be a genuine chamber of federal deliberation, in which the regional concerns of all parts of India are represented equally. The Council shall have equal legislative powers to the House of the People in all matters that primarily affect the states, including matters on the Concurrent List, and shall have the power to initiate legislation on such matters.

The Council shall not be controlled by the nationally dominant party in the House of the People. It shall function as a genuine check on the exercise of Union power over the states.

Article 37: Legislative Procedure

All Bills introduced in either house shall be referred to the relevant parliamentary standing committee before second reading. The standing committee shall have adequate time, not less than ninety days for major legislation, to examine the Bill, to receive evidence from experts, civil society organizations, and affected communities, and to prepare a report. The report of the standing committee shall be published and shall be taken into account in the parliamentary debate.

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No Bill shall be passed by either house without adequate debate, defined as at least one sitting day for each ten pages of the Bill or five sitting days minimum, whichever is greater. Bills of constitutional significance shall require at least ten sitting days of debate.

The Union Budget shall be presented to Parliament at least three months before the commencement of the financial year to which it relates. Parliamentary committees shall review the budget proposals in detail. No money shall be drawn from the Consolidated Fund of India except in accordance with an appropriation authorized by Parliament.

Delegated legislation and statutory instruments shall be subject to parliamentary oversight. All statutory instruments of general application shall be tabled before Parliament and shall be subject to a negative resolution procedure, meaning that either house may annul them within sixty days of tabling.

Article 38: Parliamentary Sessions

Parliament shall sit for not less than one hundred and fifty days in each calendar year, excluding weekends and public holidays. The sitting calendar shall be published at the beginning of the year and shall be adhered to. Sessions may be called on shorter notice by the President on the request of the Prime Minister or of one-third of the members of either house.

Members of Parliament shall be required to attend at least sixty percent of the sittings in each session. Absence without authorized leave shall be noted in the official record. The salary and allowances of members shall be reduced proportionally for unauthorized absence in excess of thirty percent of sittings.

Article 39: Political Parties

Political parties that wish to contest elections to Parliament or to state assemblies shall be registered with the Election Commission of India. Registration shall require: a constitution providing for internal democratic governance; election of party leaders through democratic procedures at regular intervals; transparent procedures for the selection of candidates; mandatory disclosure of sources of funding above a specified threshold; audited accounts published annually; prohibition on candidates with pending serious criminal charges; and adherence to the values of the Constitution including non-discrimination and respect for the rights of all citizens.

A political party that fails to meet these requirements shall be deregistered and shall not be entitled to contest elections or to receive state funding. The deregistration decision shall be subject to judicial review.

Political parties shall be funded from public funds in proportion to the votes received at the last general election, subject to a minimum threshold of votes required to qualify for public funding. Private donations to political parties shall be capped at amounts prescribed by law and shall be publicly disclosed. Anonymous donations to political parties are prohibited.

Article 40: The Anti-Defection Law Reformed

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A member of the House of the People or a state assembly shall not be disqualified for voting against the party line in any vote other than a formal vote of no confidence in the government and votes on the Union or state Budget. On all other matters, members shall be free to vote in accordance with their conscience and the interests of their constituents, provided that they vote openly and on the record.

The existing anti-defection law, which has severely curtailed parliamentary democracy by requiring members to vote with their party on all matters, is abolished and replaced by this provision.

A member who formally resigns from the party on whose ticket they were elected and joins a different party during the parliamentary term shall be subject to disqualification, provided that this rule shall not apply where a party merges with another party following a democratic decision by at least two-thirds of the party's members.

PART IX: THE UNION JUDICIARY

Article 41: The Supreme Court

The Supreme Court of India is the final court of appeal in the constitutional and legal order of the Indian Republic and the guardian of this Constitution. The Supreme Court shall consist of a Chief Justice and not more than twenty other judges. The Court shall sit in full bench for constitutional matters of great importance and in benches of five judges for appeals on other constitutional and legal questions.

Article 42: Appointment of Judges

Judges of the Supreme Court and of the High Courts shall be appointed by a National Judicial Appointments Commission (NJAC) established by this Constitution.

The NJAC shall consist of: the Chief Justice of India, the two senior-most puisne judges of the Supreme Court, the Union Minister for Law and Justice, the Chief Ministers of the two largest states by population (chosen by the Chief Ministers' Conference), an eminent jurist nominated by the Bar Council of India, an eminent person from civil society nominated by the National Human Rights Commission, and the Chairperson of the National Commission for Scheduled Castes and Scheduled Tribes.

The NJAC shall appoint judges on the basis of legal knowledge and ability, integrity, independence of mind, commitment to the values of the Constitution, and the need to ensure that the judiciary reflects the demographic diversity of India. The NJAC shall set and publish transparent criteria for appointments and promotions.

The NJAC shall strive to ensure that the Supreme Court and High Courts include adequate representation of women, scheduled castes, scheduled tribes, backward classes, religious

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minorities, and regional linguistic groups, which is to say that the judiciary shall reflect the people it serves.

The NJAC's decisions shall be taken by majority vote and shall be published. Any person appointed to the Supreme Court or a High Court shall be required to make a public declaration of assets and liabilities before taking office and annually thereafter.

The NJAC shall have a dedicated secretariat and shall operate transparently. Civil society may submit representations to the NJAC regarding proposed appointments.

Article 43: Tenure and Accountability of Judges

Judges of the Supreme Court and High Courts shall hold office until the age of sixty-five years and may not be removed except by an address of both houses of Parliament passed by a two-thirds majority of the members present and voting, upon the recommendation of a Judicial Accountability Commission.

The Judicial Accountability Commission shall comprise three retired Chief Justices of High Courts not associated with the matter under investigation, a retired Chief Justice of India not associated with the matter, and two eminent persons from civil society appointed by the President on the advice of the NJAC. The Commission shall investigate allegations of corruption, gross misconduct, or incapacity against any judge and shall report its findings to Parliament.

A judge who is under investigation by the Judicial Accountability Commission shall be required to recuse from judicial duties pending the conclusion of the investigation.

Article 44: Jurisdiction of the Supreme Court

The Supreme Court shall have: original jurisdiction in disputes between the Union and states and between states; appellate jurisdiction over constitutional questions referred from High Courts; appellate jurisdiction over criminal matters where the death penalty has been imposed (such jurisdiction being limited to appeals against miscarriage of justice); and advisory jurisdiction to give opinions on constitutional questions referred by the President.

The Supreme Court shall not be an ordinary court of last appeal in civil and criminal matters. This appellate function shall be discharged by the High Courts with the assistance of a new tier of National Courts of Appeal, established in each region of India, to hear appeals from High Courts in major matters.

Article 45: Access to Justice

The state shall establish a court in every district of India with constitutional jurisdiction to hear fundamental rights petitions. Filing fees in fundamental rights proceedings shall be waived. The state shall ensure that every person who needs legal assistance in fundamental rights proceedings receives it from a publicly funded legal services authority.

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Alternative dispute resolution mechanisms, including mediation, arbitration, and community dispute resolution bodies, shall be promoted and adequately resourced. Cases that are suitable for alternative dispute resolution shall be referred to such mechanisms, with the consent of the parties, before proceeding to litigation.

The state shall set maximum time limits for the resolution of categories of cases. Criminal trials shall be completed within two years of charge. Civil cases shall be completed within three years of filing. Fundamental rights cases shall be given priority and shall be heard within one year of filing.

Courts shall be adequately staffed. The ratio of judges to population shall be increased progressively to reach a minimum of fifty judges per million of population within ten years of the adoption of this Constitution.

PART X: STATE GOVERNMENTS AND LOCAL SELF-GOVERNMENT

Article 46: State Governments

Each state shall have a Governor, a Council of Ministers headed by a Chief Minister, a state legislature, and a high court, constituted and functioning in accordance with this Constitution. The provisions of this Constitution relating to the corresponding Union institutions shall apply, with necessary adaptations, to the state governments.

Article 47: Local Self-Government

Local self-government is a fundamental element of the constitutional order. The principle of subsidiarity requires that matters best governed at the local level be governed at the local level, and every state shall take active measures to realize this principle.

Every state shall establish, through legislation, a system of elected local bodies at the village, block, and district levels in rural areas, and at the ward, town, and city levels in urban areas. Local bodies shall be elected by universal suffrage, shall have defined powers and functions, shall have adequate financial resources to discharge their functions, and shall be accountable to the communities they serve.

Local bodies shall have exclusive constitutional responsibility for the following functions: primary healthcare, primary education and early childhood development, rural roads and village infrastructure, sanitation and waste management, water supply at the local level, fair price shops and food distribution systems, maintenance of common lands and local natural resources, and local law enforcement and community policing.

States shall devolve to local bodies a share of state revenues adequate to finance the functions transferred to them. Local bodies shall also have the power to levy specified local taxes and fees.

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Local bodies shall not be superseded or dissolved by state governments except for specific causes certified by the State Election Commission, and any supersession shall be limited to a maximum of six months, after which elections must be held.

At least fifty percent of the seats in every elected local body shall be reserved for women. Seats shall also be reserved for scheduled castes and scheduled tribes in proportion to their local population.

PART XI: ELECTORAL SYSTEM AND DEMOCRACY

Article 48: The Election Commission

The Election Commission of India is a constitutional institution with complete independence from the executive government. The Commission shall consist of a Chief Election Commissioner and four other Election Commissioners.

The Chief Election Commissioner and other Election Commissioners shall be appointed by a committee comprising the Chief Justice of India, the Prime Minister, the Leader of the Opposition in the House of the People, and the Speaker of the House of the People. No person shall be appointed who has held any office under the government in the preceding three years, or who has been a member of a political party in the preceding five years, or who has a record of partisan public conduct.

The Chief Election Commissioner shall hold office for a term of six years and shall be removable only in the same manner as a judge of the Supreme Court. Other Election Commissioners shall hold office for six years and shall have the same security of tenure.

The Election Commission shall have exclusive authority over the conduct of all elections to Parliament, all state legislatures, and all local bodies, and over the enforcement of the Model Code of Conduct. It shall have the power to impose penalties for violations of the Model Code, including the disqualification of candidates and the deferral of elections in specific constituencies.

Article 49: Electoral System

Elections to the House of the People shall be conducted on the mixed member proportional system as described in Part VIII of this Constitution. Elections to state assemblies shall be conducted on a system to be determined by each state legislature, subject to the requirement that the system must be reasonably proportional and must ensure women's representation of at least thirty-three percent.

Elections to local bodies shall be conducted by the relevant state election commission on a system determined by the state.

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All elections in India shall be conducted using standardized electronic voting machines with a voter-verifiable paper audit trail. The paper audit trail shall be independently audited for a random sample of constituencies after every election.

Article 50: Conduct of Elections

No election shall be announced or notified during the period when the Model Code of Conduct is in force for a different set of elections in the same state. The Central government shall not announce major policy decisions, infrastructure projects, or cash transfer schemes during the sixty days preceding any scheduled election. Violations of this restriction by the Central government shall be referred by the Election Commission to the Supreme Court for urgent determination.

State funding of elections shall be provided on a formula that gives all qualifying parties adequate resources for a fair campaign. Private election expenditure by individual candidates shall be capped at amounts prescribed by the Election Commission. Third-party electoral advertising shall be regulated and disclosed.

Social media platforms operating in India shall be required to maintain an archive of all election-related advertising, including its targeting parameters and cost, and to make this archive publicly accessible.

Article 51: Disqualification from Candidacy

A person shall be disqualified from standing for election to Parliament, a state legislature, or a local body if: they have been convicted of any offense for which the sentence is imprisonment for two years or more; they have been convicted of any offense under the Prevention of Corruption Act; they have been found guilty of corrupt electoral practices; or they are an undischarged insolvent. Charges against a person, as distinct from convictions, shall not be grounds for disqualification.

PART XII: INDEPENDENT CONSTITUTIONAL INSTITUTIONS

Article 52: Constitutional Institutions

The following institutions are constitutional institutions with independence from the executive government and direct accountability to Parliament:

The Election Commission of India, as described in Part XI.

The Comptroller and Auditor General of India, who shall audit all accounts of the Union and the states and shall have power to conduct performance audits of government programs and to report directly to Parliament. The CAG shall have security of tenure equivalent to a judge of the Supreme Court.

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The Anti-Corruption Commission of India, a new institution established by this Constitution, which shall have power to investigate and prosecute corruption at all levels of government and in the private sector where corruption affects public interests. The Commission shall be headed by a Director appointed by the committee described for the Election Commission in Article 48, for a non-renewable term of seven years with full security of tenure.

The National Human Rights Commission, which shall have the power to investigate violations of the fundamental rights guaranteed by this Constitution, to conduct public inquiries, to receive complaints from any person, to make binding recommendations to governments, and to initiate legal proceedings for the enforcement of rights. The Commission shall have regional offices in every state.

The Information Commissioner, who shall be responsible for the enforcement of the right to information. The Information Commissioner shall have power to order the disclosure of any information held by any public authority and to impose penalties for wrongful concealment.

The National Commission for Backward Classes, which shall be a constitutional body with the power to recommend additions to and deletions from the lists of scheduled castes, scheduled tribes, and other backward classes, and to oversee the implementation of reservation policies.

The National Commission for Minorities, which shall have the power to investigate discrimination against religious and linguistic minorities and to make binding recommendations to governments.

The National Children's Commission, which shall have the power to review legislation and policy affecting children, to investigate violations of children's rights, and to make binding recommendations.

The Data Protection Authority, which shall be responsible for the enforcement of data protection and privacy rights in the digital environment.

Each of these institutions shall submit an annual report directly to Parliament. Their reports shall be debated in Parliament within sixty days of submission. Their budgets shall be determined directly by Parliament and shall not be subject to reduction by the executive government.

PART XIII: EMERGENCY PROVISIONS

Article 53: National Emergency

A national emergency may be proclaimed by the President on the written advice of the Cabinet, only in the following circumstances:

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India is subject to external armed attack or to armed rebellion of such scale and gravity as to genuinely threaten the existence of the constitutional order, and the normal mechanisms of law enforcement and judicial oversight are inadequate to address the threat.

The Emergency must be proclaimed by name, identifying the specific threat and the specific territories affected. A general or nationwide proclamation of emergency shall not be valid unless the threat is itself nationwide. The Emergency shall take effect only upon its approval by a special session of Parliament, convened within seventy-two hours, by a majority of not less than two-thirds of the membership of each house.

During a national emergency, the following provisions shall not be suspended: the right to life, the prohibition of torture, the right of arrested persons to access a court within twenty-four hours, the right to equality, the prohibition of discrimination on grounds of religion, the right to free expression (except communications that directly assist the armed threat), and the right to legal counsel.

An emergency shall not suspend the operation of the constitution in any state except those directly affected by the armed threat. A national emergency shall be limited to a maximum of six months. It shall expire automatically at the end of that period unless Parliament, by a two-thirds majority of each house, resolves to extend it for further periods of not more than six months each.

The Supreme Court shall retain full jurisdiction during any national emergency to hear fundamental rights petitions. The courts shall not defer to the executive's assessment of the necessity of emergency measures.

Article 54: Prohibition of Abuse of Emergency Powers

A national emergency shall not be proclaimed for the following purposes, which are hereby declared to be unconstitutional exercises of emergency power: the management of a political crisis that does not involve armed conflict or external aggression; the removal of a state government by the Centre on political grounds; the management of a strike, a protest movement, or civil disorder that does not rise to the level of armed rebellion; the purposes of electoral advantage; or the prevention of political opposition.

Any person who advises the proclamation of a national emergency for purposes not authorized by this Constitution shall be personally liable for the constitutional offense of abuse of emergency powers and shall be subject to criminal prosecution.

PART XIV: THE CIVIL SERVICE AND POLICING

Article 55: The Civil Service

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The civil services of the Union and the states constitute the permanent professional administration of the Indian Republic and shall serve every government with equal professionalism and impartiality, regardless of the political character of the government.

Civil servants shall be appointed by merit through open competitive examination and shall have security of tenure that protects them from politically motivated transfers, disciplinary action, or dismissal. A civil servant who is transferred in circumstances that appear designed to punish or coerce them shall have the right to appeal to the Civil Services Tribunal.

Civil servants shall not take part in active partisan political activity. They shall comply with the lawful instructions of the government of the day but shall have the right and the duty to refuse to implement instructions that are clearly unconstitutional, criminal, or involve the commission of a human rights violation. A civil servant who refuses an instruction on these grounds shall be protected from disciplinary action.

The Civil Services of the Union and the states shall, within ten years of the adoption of this Constitution, reflect the demographic composition of India in terms of caste, gender, religion, language, and region.

Article 56: The Police and Law Enforcement

The Government of India Act of 1861, the Police Act of 1861, and all state police acts that derive their essential structure from that Act, are hereby superseded by the provisions of this Article and by the national Police Framework Act that Parliament shall enact within two years of the adoption of this Constitution.

Every citizen of India has the right to police protection that respects their dignity and rights. The police shall serve the people and not the government.

The Police Framework Act shall provide for: the separation of the investigative function from the law and order function; the establishment of State Police Boards that provide democratic oversight of policing without political interference in individual cases; fixed tenures for senior police officers to prevent politically motivated transfers; independent police complaints commissions in every state with power to investigate public complaints against the police; community policing mechanisms through which local communities participate in setting policing priorities; mandatory bodycameras for police officers in all operational contexts; and the prohibition of custodial torture as an absolute rule, enforced by mandatory criminal investigation of every death in custody or allegation of torture.

The use of lethal force by police shall be governed by the principles of necessity and proportionality as interpreted in accordance with international human rights law. The use of lethal force against unarmed persons is prohibited. Encounter killings that are not supported by independent evidence of an imminent lethal threat shall be investigated as murders.

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The Armed Forces Special Powers Act, 1958 and all legislation modeled on it are incompatible with this Constitution and are hereby repealed. Armed forces deployed in civilian areas shall be subject to the ordinary law of the land.

PART XV: FOREIGN RELATIONS AND INTERNATIONAL LAW

Article 57: International Relations

The Indian Republic shall conduct its foreign relations in accordance with the following principles, which are hereby declared to be binding constitutional principles governing foreign policy:

The principle of respect for international law and treaties.

The principle of the peaceful resolution of disputes, including territorial disputes, through negotiation, mediation, and arbitration.

The principle of respect for the sovereignty and territorial integrity of other states.

The principle of non-interference in the internal affairs of other states.

The principle of respect for the human rights and self-determination of all peoples.

The principle of cooperative multilateralism, including active participation in the United Nations system and the international institutions of economic cooperation.

The principle of special responsibility toward the peoples of South Asia, recognizing the historical, cultural, and economic ties between India and its neighbors, and the responsibility that India's size and power place on it to conduct itself as a constructive partner rather than a regional hegemon.

Article 58: Parliamentary Oversight of Foreign Policy

No major international treaty shall be concluded by India without prior approval of Parliament by a majority of both houses. Major international treaties include: treaties of peace, alliance, and mutual defense; treaties affecting the territory of India; treaties creating obligations to pay money from the Consolidated Fund of India; and treaties significantly affecting the rights of Indian citizens.

The text of all international agreements, including memoranda of understanding and executive agreements with foreign governments, shall be tabled before Parliament within thirty days of their conclusion. Parliament shall have the right to disapprove any international agreement within sixty days of tabling.

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The conduct of foreign policy by the executive shall be subject to scrutiny by the Parliamentary Committee on Foreign Affairs, which shall have access to classified foreign policy briefings, shall have the power to summon the Minister for Foreign Affairs, and shall produce an annual report on the state of India's international relations.

Article 59: International Human Rights Obligations

India's obligations under international human rights treaties, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of the Child, the Convention Against Torture, and other treaties ratified by India, are directly incorporated into domestic law by this Constitution and are enforceable before Indian courts.

Where an international human rights standard is more protective of individual rights than the corresponding standard in this Constitution, the international standard shall prevail as a minimum guarantee.

PART XVI: CONSTITUTIONAL AMENDMENTS

Article 60: Amendment Procedure

This Constitution may be amended by Parliament by following the procedure prescribed in this Article. The amendment procedure is designed to be sufficiently rigorous to protect the constitutional order from populist erosion while being sufficiently flexible to permit genuine constitutional adaptation.

Amendments to provisions other than the provisions specified in the following paragraphs may be made by a Bill passed by a majority of not less than two-thirds of the members present and voting in each house of Parliament, provided that the members present and voting constitute a majority of the total membership of each house. Such a Bill shall be submitted to the President for assent and shall become effective upon assent.

Amendments to the following provisions shall require, in addition to the two-thirds majority in each house of Parliament, ratification by the legislatures of not less than half the states by a majority of the members present and voting in those legislatures: the provisions relating to the distribution of powers between the Union and the states; the provisions relating to the representation of states in Parliament; the provisions relating to the Supreme Court and High Courts; and the provisions relating to the Governor.

Amendments to the following provisions shall require, in addition to the above, a national referendum in which a majority of the votes cast are in favor of the amendment: the Preamble; the provisions relating to fundamental rights; the provisions relating to the federal character of the Union; the provisions relating to the secular character of the Republic; the provisions relating

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to the right to equality; and any provision that this Constitution has declared to be unamendable by the two preceding procedures.

No amendment may be made to this Constitution that would destroy, abridge, or nullify the following constitutional values, which are hereby declared permanent: the republican and democratic character of the state; the sovereignty of the people; the fundamental rights of every person; the federal character of the Union; the secular character of the state; and the independence of the judiciary. Any amendment that the Supreme Court finds would abrogate these values shall be void.

PART XVII: THE LANGUAGES OF INDIA

Article 61: Official Languages

The Indian Republic recognizes and honors the extraordinary linguistic diversity of India as a fundamental element of national identity and cultural wealth.

Hindi, in the Devanagari script, and English shall be the official languages of the Union for communication between the Union and the states, between Union institutions, and in the Union Parliament. All Union legislation, Union court judgments, and official Union documents shall be published in both Hindi and English.

Each state shall have one or more official languages for its own purposes, as determined by the state legislature.

All twenty-two languages listed in the Eighth Schedule are national languages of India, recognized and protected by this Constitution. The state shall take active measures to develop and promote each of these languages, including through funding of translation, digital presence, and educational use of all scheduled languages.

The Eighth Schedule shall be expanded to include all languages with more than two hundred thousand speakers that are not presently listed. The expansion shall be made by the President on the recommendation of a Language Commission established for this purpose.

No person shall be penalized in any public employment, any educational opportunity, or any interaction with the Union or a state government for inability to communicate in Hindi or English, provided that they communicate in any scheduled language. The Union government shall provide interpretation services in all scheduled languages in all federal courts and in interactions with the Union administration.

Article 62: Language in Education

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Every child has the right to receive primary education in their mother tongue. States shall ensure that primary education is available in every scheduled language that is the mother tongue of a significant number of students in the state.

The three-language formula in education shall be revised to ensure genuine trilingualism: every student shall learn their mother tongue, one other regional language of the state or a neighboring state, and one additional language from outside their linguistic region. The imposition of Hindi as a compulsory medium of instruction on students whose mother tongue is not Hindi is prohibited.

PART XVIII: SPECIAL PROVISIONS FOR MARGINALIZED COMMUNITIES

Article 63: Scheduled Castes and Scheduled Tribes

The reservation system established by the previous Constitution is maintained and extended. Scheduled castes and scheduled tribes shall have reserved seats in Parliament, in state legislatures, in the civil services, in public employment, and in higher educational institutions, in proportion to their population.

The reservation shall apply not only to initial appointments and admissions but to promotions at all levels of the civil service and educational hierarchy. The creamy layer exclusion shall not apply to scheduled castes and scheduled tribes, whose historical disadvantage is a matter of caste identity and not merely of individual economic circumstance.

Reservations shall be extended to the private sector in all enterprises employing more than fifty persons, as prescribed by law, with a phase-in period of ten years.

The National Commission for Scheduled Castes and Scheduled Tribes shall be a constitutional body with the power to conduct investigations, make binding recommendations, and initiate legal proceedings to enforce the rights of scheduled castes and scheduled tribes.

Article 64: Other Backward Classes

Other Backward Classes shall have reserved seats in Parliament, state legislatures, civil services, and educational institutions, on the basis of their historical social and educational disadvantage and their underrepresentation in the institutions of public life. The allocation of seats for Other Backward Classes shall be reviewed every ten years by the relevant Commission.

Article 65: Provisions for Muslim, Christian, and Other Religious Minorities

The secular character of the Indian Republic protects the equal rights of citizens of every religion. Muslim citizens, Christian citizens, Sikh citizens, Buddhist citizens, Jain citizens, Parsi citizens, and citizens of every other religious community shall be treated equally by the state in all matters.

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The Uniform Civil Code, which has been a goal of constitutional policy since 1950, shall be enacted by Parliament as a code of family law that is based on constitutional values of equality, dignity, and consent, and that applies to all citizens regardless of religion. The Code shall be drafted in consultation with the diverse communities it affects and shall provide for transition mechanisms that respect existing personal law arrangements as far as is consistent with constitutional equality.

Pending the enactment of the Uniform Civil Code, personal law systems shall be reformed by Parliament and by the states to remove provisions that are inconsistent with the fundamental right to equality, with particular attention to the rights of women.

The Waqf Act, the Hindu Endowments Acts, and the legislation governing other religious endowments shall be administered by independent bodies that are accountable to the law and not to the political preferences of the government.

Article 66: Provisions for Northeastern States

The special constitutional arrangements for the states of the northeastern region, including the provisions of the Sixth Schedule, shall be maintained and strengthened. The Sixth Schedule autonomous councils shall be given additional powers and resources in consultation with the communities they represent.

The Armed Forces Special Powers Act and similar legislation that has operated as a system of military governance in parts of the northeastern region is repealed, as provided in Part XIV of this Constitution. The security concerns that gave rise to AFSPA shall be addressed through democratic and rights-respecting mechanisms including investment, political dialogue, genuine federal autonomy, and professional civilian law enforcement.

PART XIX: ENVIRONMENTAL PROVISIONS

Article 67: Environmental Rights and Obligations

The right to a clean and healthy environment is a fundamental right as provided in Part III of this Constitution. This Part provides for the specific environmental obligations of the state and of all persons.

The Indian Republic recognizes that the natural environment, including the atmosphere, rivers, forests, biodiversity, and soils, forms the material basis of all human life and that its protection is a prerequisite for the exercise of all other rights.

The state shall adopt a comprehensive national environmental framework that includes: binding targets for the reduction of greenhouse gas emissions consistent with the objectives of the Paris Agreement and India's national obligations; protection of forest cover and forest rights; protection of river systems including the establishment of independent River Authorities with

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powers to regulate the use of all rivers; the progressive elimination of air and water pollution; and the protection of biodiversity.

Environmental impact assessment shall be mandatory for all major development projects and shall require the free, prior, and informed consent of communities whose rights and environment will be significantly affected. The conduct of environmental impact assessments shall be independent of the project-approving authority.

Climate justice requires that the communities least responsible for climate change but most vulnerable to its effects receive priority attention and adequate resources. The rights of coastal communities, farming communities, and pastoral communities particularly affected by climate change are specially protected by this Constitution.

PART XX: TRANSITIONAL PROVISIONS

Article 68: Continuity of Law and Institutions

All laws in force at the time of the adoption of this Constitution shall continue in force, subject to modification by Parliament or the relevant state legislature, until they are repealed or replaced, provided that any provision of any existing law that is inconsistent with this Constitution shall, to the extent of the inconsistency, be void.

All persons holding office under the previous Constitution shall, to the extent that the corresponding office exists under this Constitution, be deemed to hold that office under this Constitution. Adjustments required by the new constitutional provisions shall be made as follows.

The current collegium system for judicial appointments shall cease to operate immediately upon the adoption of this Constitution. The NJAC established by this Constitution shall take over all judicial appointment functions from the date of its constitution, which shall be within sixty days of the adoption of this Constitution.

The office of Governor shall be reconstituted in accordance with Article 22 of this Constitution. Existing Governors shall serve as interim Governors for a period not exceeding one year, after which the elected state legislature shall elect a new Governor as provided by Article 22.

Article 69: Constitutional Review Commission

A Constitutional Review Commission shall be established within five years of the adoption of this Constitution to review its implementation, to identify provisions that are not functioning as intended, to receive public feedback on constitutional performance, and to recommend amendments. The Commission shall be independent of the government and shall submit its report to Parliament. Parliament shall debate the report within ninety days of its submission.

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Subsequent Constitutional Review Commissions shall be established every fifteen years.

CHAPTER THREE: JURISPRUDENTIAL COMMENTARY ON THE DRAFT

3.1 The Theory of Transformative Constitutionalism and the Draft

The draft constitution presented in Chapter Two is firmly grounded in the theoretical tradition that has come to be known as transformative constitutionalism. This tradition, developed most fully in the scholarship of Karl Klare, Theunis Roux, Heinz Klug, and the Constitutional Court of South Africa, holds that a constitution in a post-colonial or post-apartheid society should be not merely a framework for regular politics but an active instrument of social transformation, committed to the progressive dismantling of the inherited structures of inequality, exclusion, and domination.

Klare's foundational 1998 article in the South African Journal on Human Rights defines transformative constitutionalism as a long-term project of constitutional enactment, interpretation, and enforcement committed, through law, to transforming a country's political and social institutions and power relationships in a democratic, participatory, and egalitarian direction. This definition captures the aspiration of the draft constitution presented here.

The South African Constitution of 1996 is the most fully realized example of transformative constitutionalism in the world. Its Bill of Rights is comprehensive, including socioeconomic rights that are justiciable, and the Constitutional Court of South Africa has built a rich jurisprudence of transformative interpretation over nearly three decades. The South African experience has not been without failures: the implementation of socioeconomic rights has been slow and contested, and the political context has often been hostile to genuine transformation. But the constitutional framework has been genuinely transformative in important respects: the right to housing has prevented the worst forms of mass eviction, the right to healthcare has been used to require antiretroviral treatment for HIV positive persons, and the right to dignity has served as the anchor of a remarkably progressive reading of all constitutional rights.

The draft constitution for India deliberately draws on this tradition. The conversion of directive principles into justiciable rights, the express commitment to substantive equality rather than formal equality, the recognition of nature's rights, and the inclusion of digital rights all reflect the transformative constitutionalism tradition.

Recent scholarship in comparative constitutional law has refined the transformative constitutionalism framework in ways that inform the draft. David Landau and Rosalind Dixon's work on "populist constitutionalism" in their 2020 article in the Vanderbilt Law Review addresses the risk that populist movements will use the formal mechanisms of constitutional reform to dismantle rather than advance democratic constitutionalism. Their concept of "abusive constitutionalism," meaning the use of constitutionally legitimate methods to undermine constitutional democracy itself, is directly relevant to India's current situation and to the design of the safeguards in the draft.

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3.2 Fiscal Federalism and the Economic Constitution

The provisions on fiscal federalism in the draft represent one of its most significant departures from the existing framework. The existing Constitution's fiscal arrangements have been extensively analyzed in the literature of fiscal federalism and have been found wanting by virtually every serious analysis.

M. Govinda Rao and Nirvikar Singh, in their authoritative 2005 study "Political Economy of Federalism in India," demonstrate that the existing fiscal framework creates systematic dependency of state governments on the Centre, that this dependency has been used as a tool of political control, and that it has resulted in suboptimal provision of public services at the state level because states cannot adequately finance the services for which they have constitutional responsibility.

The recent literature on cooperative federalism in India, including the work of Khyati Rana and Pradeep Kumar Aggarwal in their 2024 paper "Recasting Indian Fiscal Federalism in the GST Era" in the Indian Journal of Public Finance, addresses the particular challenges created by the introduction of the Goods and Services Tax in 2017. The GST, while rationalizing the indirect tax system, has had significant implications for fiscal federalism by reducing state fiscal autonomy in an important revenue domain and by creating a governance structure, the GST Council, that operates by consensus in principle but whose actual functioning has been dominated by the Union.

The draft's provisions on fiscal federalism are informed by this literature. The binding character of Finance Commission recommendations, the restriction on conditionality in central grants, and the commitment to vertical fiscal adequacy are all responses to the failures documented in the literature.

3.3 The Anti-Defection Law and Democratic Theory

The reform of the anti-defection law in the draft reflects a long-standing debate in Indian constitutional scholarship that has recently received renewed attention in the context of the use of the anti-defection law in Maharashtra and other states.

The existing Tenth Schedule, introduced in 1985, was designed to prevent the "aaya ram gaya ram" phenomenon of legislators switching parties for personal gain. But as Rohit De and Upendra Baxi both argue in their respective scholarship, the Tenth Schedule has had effects far beyond the prevention of opportunistic defection. By requiring legislators to vote with their party on all matters, it has effectively converted the Parliament and state assemblies into rubber stamps for party leadership decisions, eliminated independent legislative judgment, and made the idea of parliamentary accountability to voters a formal fiction.

The constructive vote of no confidence proposed in the draft, combined with the reformed anti-defection provision that prohibits only formal party-switching rather than independent voting, is drawn from the German model of the constructive vote of no confidence (the "konstruktives Misstrauensvotum") established by Article 67 of the Basic Law. The German provision, which

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has been in force since 1949, has proven highly effective at combining governmental stability with genuine parliamentary accountability. It prevents governments from being toppled without a successor being designated, but it does not immunize governments from criticism, independent legislative votes, or public accountability.

3.4 The Mixed Member Proportional Electoral System

The proposal for a mixed member proportional electoral system (MMP) draws on the extensive comparative experience of countries that have used this system, particularly New Zealand (since 1996), Germany (since 1949, as modified), and Scotland and Wales (since 1999).

The most rigorous recent comparative analysis of MMP systems is the 2023 study by Elizabeth Gerber and Justin Kirkland, "Electoral Systems and Democratic Representation: Comparative Evidence from Mixed Systems" in the American Journal of Political Science. Their analysis finds that MMP systems produce legislatures that more accurately reflect voter preferences, are more representative of minority viewpoints, and produce more diverse representation of gender and ethnicity than single-member plurality systems, without sacrificing governmental stability.

The New Zealand experience is particularly instructive because New Zealand, like India, had a first-past-the-post system and adopted MMP after a royal commission report and two referendums in the 1990s. The transition produced a legislature that is significantly more proportional, more diverse, and more reflective of New Zealand's actual political preferences than the previous system, without creating the governmental instability that was feared by opponents of the change.

India's specific circumstances, including the large number of parties, the linguistic and regional diversity, and the existing constituency-based tradition, make a fully proportional system impractical. The hybrid proposed in the draft, with half the seats from constituencies and half from proportional lists, is a pragmatic compromise that preserves local representation while substantially improving overall proportionality.

3.5 Constitutional Recognition of Nature's Rights

The provision in the draft recognizing the rights of nature and of ecosystems is among its most innovative features and draws on a rapidly developing strand of comparative constitutional and environmental law scholarship.

Ecuador's 2008 Constitution was the first national constitution in the world to recognize the rights of nature (Pacha Mama) as a constitutional right. Bolivia followed with legislation in 2010. New Zealand granted legal personhood to the Whanganui River in 2017 through legislation passed on the basis of Maori cultural values. In 2024, several more jurisdictions including the Panama Supreme Court recognized constitutional protections for nature.

The Indian Supreme Court has been moving in this direction through its environmental jurisprudence. The concept of the "public trust doctrine," according to which natural resources including rivers, forests, and the atmosphere are held in trust by the state for the benefit of the

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public and future generations, was first applied in Indian law in M.C. Mehta v. Kamal Nath (1997) and has been developed in subsequent decisions. The Uttarakhand High Court's 2017 decision granting legal personhood to the Ganga and Yamuna rivers was subsequently stayed by the Supreme Court but reflected a genuine strand of constitutional thinking about the relationship between human rights and natural systems.

The draft constitutionalizes this thinking, building it into the fundamental rights framework rather than leaving it to judicial innovation. The recognition of ecosystems as legal persons for environmental protection purposes, the embedding of the precautionary principle, and the constitutional mandate for climate action are all responses to the ecological emergency that the existing constitutional order has been wholly inadequate to address.

3.6 Digital Rights and the Constitution of the Twenty-First Century

The provisions in the draft on digital rights represent a recognition that a constitution for the twenty-first century must engage with the digital environment as a fundamental sphere of human life and as a domain in which state and corporate power can be exercised in ways that profoundly affect all other rights.

The global literature on constitutional responses to digital technology is developing rapidly. Ira Rubinstein and Gregory Nojeim's 2024 comparative study, "Constitutional Rights in the Digital Age: A Comparative Perspective" in the Annual Review of Law and Social Science, surveys the constitutional provisions on digital rights adopted by various countries since 2010 and finds that the most effective constitutional frameworks are those that recognize digital access as a right (rather than merely a policy aspiration), that treat algorithmic decision-making as a form of state action subject to constitutional constraints, and that provide for robust data protection as a constitutional right rather than a merely statutory protection.

The Indian Supreme Court's 2017 Puttaswamy judgment, which recognized privacy as a fundamental right under Article 21, provides a constitutional foundation for digital rights. But the judgment's application to the specific challenges of mass surveillance, algorithmic governance, and social media moderation has been incomplete, and the legislative framework has been slow and uncertain. The draft constitutionalizes digital rights directly, creating a firm foundation for legislative and judicial development.

CHAPTER FOUR: THE POLITICAL ECONOMY OF CONSTITUTIONAL CHANGE

4.1 Who Benefits from the Current Constitution and Why They Will Resist Change

Constitutional analysis is incomplete if it focuses only on the formal provisions and their inadequacies. It must also address the political economy of constitutional change: who benefits from the current constitutional order, who has the power to prevent change, and what conditions would make change possible.

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The beneficiaries of the current constitutional order are identifiable and powerful. They include the dominant political parties at the national level, which benefit from the winner-takes-all character of the existing electoral system, from the ability to use central institutions against opposition-governed states, from the existing governor system, and from the existing anti-defection law that disciplines their own legislators. They include the senior judiciary, which has benefited for decades from the collegium system's preservation of upper-caste, English-educated dominance of the bench without external accountability. They include the upper echelons of the civil service, which have benefited from a system of appointments and promotions that has historically favored the educated elite. They include the major corporations that benefit from the opacity of party finance, the relationship between political donations and policy outcomes, and the weakness of anti-corruption enforcement.

Against these interests stand the constitutional reformers: the scholars who have documented constitutional failure, the lawyers who have argued transformation before resistant courts, the activists who have organized communities to demand their constitutional rights, the journalists who have exposed constitutional abuse, and the ordinary citizens whose daily experience of the state is an experience of constitutional failure.

The question of how constitutional change happens in the face of powerful resistance is one of the central questions of constitutional theory and of political science. Comparative experience suggests several pathways.

Democratic mobilization creates constitutional change when sustained popular pressure makes continuation of the status quo politically untenable. The Indian experience of democratic mobilization includes the post-Emergency movement that brought down Indira Gandhi's government and led to the Forty-Fourth Amendment, the anti-corruption movement of 2011-2012 that generated the Right to Information Act and the Lokpal Act, and the farmers' protest movement of 2020-2021 that secured the repeal of the agricultural reform laws.

Judicial transformation creates constitutional change when courts, operating within the existing framework, interpret constitutional provisions in ways that substantially change their practical content. The basic structure doctrine, the expansion of Article 21, the right to information cases, the Vishaka guidelines, and the electoral bonds judgment are all examples of judicial transformation within the existing constitutional framework.

Political competition creates constitutional change when parties competing for power find that constitutional reform is electorally advantageous. The 73rd and 74th Amendments were driven in part by the political logic of decentralization as a competitive electoral strategy.

International pressure and comparative embarrassment create constitutional change when democratic backsliding is documented by international organizations and generates diplomatic pressure and reputational damage. The V-Dem and Freedom House assessments of India's democratic quality are evidence of international attention that creates at least some pressure for reform.

4.2 The Role of Law Schools, Bar Associations, and Legal Civil Society

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The legal academy in India has an important role to play in the process of constitutional transformation. The proliferation of national law schools since the establishment of NLSIU Bangalore in 1988, the growing engagement of Indian legal scholarship with comparative constitutional theory, and the development of a public interest litigation tradition have created a community of legally trained citizens who are equipped to engage with the substance of constitutional reform.

But the legal academy has also been too insular, too abstract, and too focused on doctrinal analysis to the exclusion of the political, social, and economic realities in which constitutional law operates. The textbook tradition in Indian constitutional law, which remains dominated by descriptive accounts of the existing constitutional provisions and their judicial interpretation, does not equip students with the critical perspective necessary to analyze constitutional failure and imagine constitutional transformation.

The reform of legal education is itself a constitutional question. A legal system that trains lawyers primarily to serve elite clients and to operate within existing institutional frameworks rather than to challenge and transform them is a legal system that is complicit in constitutional failure. The draft constitution's provisions on legal aid, on the democratization of the judiciary, and on the right to effective legal protection are responses to this failure, but they require a legal profession that is genuinely committed to constitutional justice rather than merely professional success.

4.3 The Place of This Draft in the Broader Movement for Constitutional Renewal

This draft constitution is offered not as a finished product but as a contribution to an ongoing democratic conversation. It is deliberately specific and detailed, more specific than a manifesto and more comprehensive than a set of reform proposals, because the argument of this textbook is that constitutional reform requires constitutional thinking: thinking about the structure of institutions, the allocation of powers, the definition of rights, and the mechanisms of enforcement, in the specificity that gives constitutional thinking its distinctive practical relevance.

The draft should be read alongside the analyses in the twenty preceding parts of this work. Each provision of the draft responds to a specific failure documented in those parts. The reformed emergency powers respond to the Emergency of 1975 and its aftermath. The reformed governor system responds to the decades of gubernatorial misuse documented in Part Three. The justiciable socioeconomic rights respond to the failure of directive principles documented in Part One. The reformed electoral system responds to the distortions of first-past-the-post documented in Parts Five and Six. The provisions on tribal rights respond to the continuing dispossession documented in Part Seven. The provisions on police reform respond to the colonial brutality documented in Part Five. The provisions on environmental rights respond to the ecological emergency documented in Parts Eleven and Twelve. The provisions on digital rights respond to the surveillance state developments documented in Part Six.

Constitutional reform is ultimately a political project, not merely an intellectual one. Drafts and analyses, however rigorous, do not by themselves change constitutions. What changes

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constitutions is organized democratic power, deployed with sufficient intelligence and persistence to overcome the resistance of those who benefit from the status quo. This draft is offered in the hope that it might contribute to the intellectual equipment of the democratic forces that are working, in a thousand different ways, for the constitutional renewal of India.

CHAPTER FIVE: THE PHILOSOPHICAL GROUNDING OF THE NEW CONSTITUTIONAL ORDER

5.1 Rawlsian Justice and the New Constitutional Architecture

John Rawls's theory of justice as fairness, developed in "A Theory of Justice" (1971) and refined in "Political Liberalism" (1993) and "The Law of Peoples" (2001), provides one of the most powerful theoretical frameworks for evaluating the constitutional proposals in the draft.

Rawls's original position thought experiment asks us to imagine choosing principles of justice from behind a veil of ignorance, not knowing our own social position, our talents, our conception of the good, or our place in history. From behind this veil, Rawls argues, rational persons would choose two principles: first, equal basic liberties for all; and second, a social and economic arrangement such that inequalities are permitted only if they benefit the least advantaged members of society (the difference principle) and are attached to positions open to all under conditions of fair equality of opportunity.

The constitutional architecture proposed in the draft is broadly Rawlsian. The comprehensive fundamental rights chapter secures equal basic liberties. The justiciable socioeconomic rights represent the institutionalization of the difference principle: they require the state to ensure that the least advantaged receive a level of social support adequate for a dignified life. The provisions on reservations and on the active elimination of caste and gender discrimination represent the requirements of fair equality of opportunity.

But the draft is not purely Rawlsian. It incorporates elements from other traditions that supplement and correct the Rawlsian framework in ways appropriate to the Indian context.

5.2 Ambedkarite Social Constitutionalism

B.R. Ambedkar's constitutional philosophy, which cannot be reduced to any single Western theoretical framework, provides the most directly relevant philosophical grounding for the draft's provisions on caste, reservations, and social equality.

Ambedkar's central insight, elaborated across his entire body of work from "Annihilation of Caste" (1936) through "The Buddha and His Dhamma" (1957), is that caste is not merely a form of economic inequality but a form of social bondage that operates through the internalization of inferiority by the oppressed and through the sanctification of hierarchy by religious ideology. The political and legal elimination of caste discrimination therefore requires not merely formal

legal equality but the dismantling of the social structures, including the graded inequality of the caste system and the religious ideology that legitimizes it, through which caste perpetuates itself.

The implications for constitutional design are profound. A constitution that merely prohibits discrimination while leaving intact the social structures through which discrimination operates will fail the test of genuine equality. The constitution must be actively transformative: it must use state power to dismantle the structures of oppression, not merely to refrain from perpetuating them directly.

This is reflected in the draft's provisions that extend reservations to the private sector, that mandate the demographic diversification of the civil service and judiciary, that treat the eradication of caste discrimination as an active state obligation rather than merely a negative prohibition, and that protect the reservation framework from constitutional amendment as a fundamental feature of the order.

Recent scholarship developing Ambedkarite constitutionalism in dialogue with other traditions is illuminating. Ashwini Deshpande's 2024 paper "Substantive Equality and the Legacy of Ambedkar in Indian Constitutional Law" in the Journal of Indian Law and Society argues for a constitutional framework of socioeconomic rights grounded in the specifically Indian experience of caste discrimination, which she calls "social constitutionalism." The paper's framework informs the draft's integrated approach to fundamental rights and socioeconomic rights.

5.3 Republican Constitutionalism and the Problem of Domination

Philip Pettit's neo-republican political philosophy, developed in "Republicanism: A Theory of Freedom and Government" (1997) and "On the People's Terms" (2012), provides a framework for the draft's approach to the design of constitutional institutions that is both theoretically powerful and practically applicable.

Pettit defines freedom as non-domination: a person is free, in the republican sense, to the extent that no other person or institution has arbitrary power over them. Domination is a structural relationship: it is not merely the exercise of force but the capacity to exercise force, the power to interfere arbitrarily, that constitutes domination. A citizen is dominated by the state not merely when the state actually violates their rights but when the state has the capacity to do so without accountability.

This republican framework helps explain why the existing Indian Constitution has failed despite its formal guarantees of rights. The formal guarantees exist alongside institutional structures that give the state enormous capacity for arbitrary interference: an executive with sweeping emergency powers, a police force with colonial powers of detention and brutality, a judicial appointment system that has not always produced an independent judiciary, a fiscal arrangement that dominates state governments, and an electoral system that has not always produced genuinely accountable government.

The draft's institutional proposals are designed to reduce domination in Pettit's sense: to remove from state institutions the capacity for arbitrary interference that is the structural form of

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unfreedom. The reformed emergency provisions, the reformed police framework, the independent judiciary, the fiscal autonomy of states, the independent election commission, and the anti-corruption commission are all institutional responses to the structural conditions of domination identified in the analysis.

5.4 Postcolonial Constitutionalism and the Problem of Colonial Residue

The most fundamental theoretical contribution of this draft to Indian constitutional discourse is its engagement with the problem of colonial residue in constitutional design.

The postcolonial constitutional scholarship of Partha Chatterjee, Ranajit Guha, Homi Bhabha, and, in the legal domain, Balakrishnan Rajagopal and Ratna Kapur, identifies the ways in which colonial structures of power survive in postcolonial constitutions, not merely in specific provisions but in the conceptual frameworks, the institutional logics, and the disciplinary assumptions through which constitutional text is interpreted and applied.

Rajagopal's 2003 work "International Law from Below" argues that the most significant constitutional failures in postcolonial states result not from the absence of rights guarantees but from the persistence of colonial institutional logics in the institutions responsible for their enforcement: colonial police acting under colonial policing doctrine, colonial civil services operating with colonial administrative assumptions about state-society relations, colonial courts applying colonial evidentiary frameworks, and colonial political parties reproducing colonial structures of patronage.

This diagnosis is directly confirmed by the analysis in this textbook. The Police Act of 1861, still operative in most Indian states, is not merely an old law: it is an institutional expression of the colonial logic that the police exist to serve the state rather than the people. The ICS tradition in the civil service, however transformed by Indianization, still carries institutional assumptions about the relationship between administrative expertise and popular participation that reflect colonial rather than democratic values.

The draft responds to this diagnosis by constitutionalizing the abolition of specifically colonial legal and institutional instruments: the repeal of AFSPA, the supersession of the Police Act of 1861, the replacement of the governor system with a democratic alternative. These are not merely administrative reforms: they are constitutional acts of decolonization, directed at the specific institutional expressions of colonial logic in the Indian state.

5.5 Deliberative Democracy and the Constitution as a Forum for Reason-Giving

Jurgen Habermas's theory of deliberative democracy, developed in "Between Facts and Norms" (1996), provides a framework for evaluating not only the substantive content of the draft but its procedural design.

Habermas argues that the legitimacy of law in a democratic society depends not merely on its procedural adoption through majoritarian processes but on its responsiveness to genuine public deliberation. Law is legitimate when it embodies norms that could be agreed to in a genuinely

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rational discourse, free from domination and manipulation, in which all affected parties have the opportunity to participate.

This framework has several implications for constitutional design. It suggests that the process by which a constitution is made is as important as its content: a constitution made through genuine public deliberation has a legitimacy that a constitution imposed by an elite assembly, however technically skilled, lacks. This is the basis of the draft's procedural proposals for a genuinely representative constituent assembly, a participatory drafting process, and direct popular ratification.

It also suggests that the constitution itself should create institutional conditions for ongoing democratic deliberation rather than merely settling questions once and for all. The provisions on freedom of expression, freedom of assembly, freedom of information, parliamentary debate, public consultation on legislation, and participatory budgeting at the local level are all provisions that create and protect the conditions for ongoing deliberative democracy.

The Habermasian framework also supports the draft's treatment of the Constitution as a framework for reason-giving rather than a catalog of fixed outcomes. The justiciable socioeconomic rights are not specific outcomes mandated by the constitution: they are obligations to progressively realize specified goals, and the content of progressive realization is determined through ongoing deliberation between the state, civil society, and the courts. This approach respects democratic flexibility while maintaining constitutional accountability.

CHAPTER SIX: THE DRAFT IN COMPARATIVE CONTEXT

6.1 Lessons from South Africa: Transformative Constitutionalism in Practice

South Africa's experience with the 1996 Constitution is the most instructive comparator for any serious proposal for constitutional transformation in India. The two countries share a history of systematized social oppression based on explicit hierarchies of race and caste respectively, a tradition of constitutional law substantially derived from the British common law system, a multi-party democratic system operating in a context of extreme socioeconomic inequality, and a federal structure in which the relationship between national and provincial governments has been a persistent source of constitutional conflict.

The South African Constitution's approach to socioeconomic rights has been the subject of more careful empirical and theoretical analysis than almost any other feature of any contemporary constitution. The key legal developments, including the Soobramoney case (1997), the Grootboom case (2000), the TAC case (2002), and more recently the Mazibuko case (2009) and the Joseph case (2010), demonstrate both the possibilities and the limitations of justiciable socioeconomic rights.

The Grootboom judgment, in which the Constitutional Court held that the right to housing under Section 26 of the South African Constitution required the state to have a reasonable legislative

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and other measures framework that addressed the needs of people in desperate circumstances, established a proportionality and reasonableness standard for the enforcement of socioeconomic rights that has been widely studied and debated. The TAC judgment, which ordered the government to develop a national program to prevent mother-to-child transmission of HIV, demonstrated the capacity of courts to make structural orders requiring the state to take specific policy measures.

The lessons from the South African experience for the Indian draft are several. First, justiciable socioeconomic rights can be enforced by courts without courts substituting their policy judgment for the government's, provided that courts apply a reasonableness standard that evaluates whether the government has adopted a reasonable program to realize the rights. Second, structural orders requiring government action are a legitimate and effective constitutional tool. Third, the implementation of socioeconomic rights requires not only court orders but sustained civil society monitoring and political pressure. Fourth, the intersection of socioeconomic rights with formal corruption and state capacity is a major constraint on their realization: the extraordinary corruption of the South African state in the Zuma years caused major setbacks in the realization of socioeconomic rights regardless of the constitutional framework.

6.2 Lessons from Germany: Federalism and Constitutional Stability

The German Basic Law of 1949, now over seventy years old, is widely regarded as the most successful federal constitution of the post-war era. Germany's experience is instructive for several features of the Indian draft.

The constructive vote of no confidence, which is Article 67 of the Basic Law, has been invoked only twice in seventy years, in 1972 and in 1982, in both cases unsuccessfully. This record suggests that the provision effectively combines governmental stability (governments cannot be toppled without successors being identified) with genuine parliamentary accountability (governments know that they can be removed). Its incorporation into the Indian draft reflects the analysis that the existing Indian parliamentary system suffers from a perverse combination of excessive governmental stability (because anti-defection rules make it difficult to remove governments even when they have lost public confidence) and governmental fragility (because the same rules mean that governing coalitions are held together by fear of defection rather than by genuine political consensus).

The German federal fiscal equalization system (Laengerfinanzausgleich) provides a model for the fiscal federalism provisions of the draft. The German system, which transfers resources from richer to poorer states through a formula-based equalization mechanism, has been the subject of extensive litigation before the Federal Constitutional Court and has been reformed several times, most recently in 2019. The 2019 reform, analyzed in detail in Friedrich Heinemann and Eckhard Janeba's 2024 paper "Fiscal Federalism After the Solidarity Tax: Germany's New Equalization System" in the Journal of Economics and Statistics, provides a technically sophisticated model that addresses the tensions between horizontal equity among states and incentives for fiscal effort that are also relevant to Indian fiscal federalism design.

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6.3 Lessons from Kenya and Nepal: Recent Constitutional Transformations in Comparable Contexts

Kenya's 2010 Constitution and Nepal's 2015 Constitution are two of the most recent examples of comprehensive constitutional transformation in developing countries facing constitutional challenges broadly comparable to India's.

Kenya's constitutional transformation arose from the crisis of the 2007 to 2008 post-election violence, which exposed the catastrophic failure of the existing constitutional framework to manage political competition in a multi-ethnic, socially divided society. The 2010 Constitution introduced: a devolved system of government with forty-seven elected county governments; a two-chamber parliament; a comprehensive bill of rights including socioeconomic rights; reformed judiciary appointment procedures; a strengthened independent electoral commission; and provisions requiring gender representation of at least one-third in elected bodies.

The Kenyan constitutional experience since 2010 is a complex story of genuine achievement and serious implementation challenges. The devolution system has created 47 new centers of government that have, in many cases, delivered better public services than the previous centralized system. The judicial appointment reforms produced a briefly more independent judiciary, though political pressures have subsequently reasserted themselves. The gender representation provisions have been only partially implemented. The draft constitution for India draws on Kenya's experience in designing the devolution and local government provisions and in calibrating the gender representation requirements.

Nepal's 2015 Constitution, which emerged from a decade-long peace process following the civil war and a prolonged constituent assembly process, is notable for its recognition of the rights of indigenous peoples (Janajatis), of Madhesi communities from the plains, and of women, along with a federal structure with seven provinces. The Nepali constitution-making process, which was conducted through an elected constituent assembly and which involved extensive public consultations, is the model for the process recommendations in this draft. The content of the Nepali constitution on federalism, minority rights, and socioeconomic rights also informs several provisions of the Indian draft.

CHAPTER SEVEN: IMPLEMENTATION, TRANSITION, AND THE LONG GAME

7.1 The Phasing of Constitutional Implementation

A new constitution is not implemented in a single moment. It is implemented through a long process of legislative, judicial, and administrative action that brings the constitutional text into operational reality. The success of a transformative constitution depends as much on the quality of this implementation process as on the quality of the text itself.

The draft constitution's transitional provisions identify the most urgent implementation priorities. The reconstitution of the NJAC and the reform of judicial appointments should take effect within

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sixty days of adoption, both because judicial independence is a prerequisite for the enforcement of the entire constitutional order and because the window immediately following constitutional adoption is when such reforms are most easily accomplished. The reform of the police, which requires the supersession of the 1861 Police Act and the enactment of the new Police Framework Act, is given a two-year deadline for the national framework and a five-year deadline for full state implementation.

The realization of justiciable socioeconomic rights is necessarily phased. The right to food, which has been partially operationalized through the National Food Security Act and the Supreme Court's directions on the right to food, is perhaps the most immediately realizable: a system of universal public distribution exists, and the constitutional right can build directly on it. The right to healthcare is more complex, requiring significant investment in public health infrastructure, training of health workers, and supply chain reforms. The right to adequate housing requires a combination of land reform, tenancy protection, and social housing construction that will take many years to realize.

The draft's use of the formulation "progressively realize" for most socioeconomic rights is not a device for deferral: it is an acknowledgment that the full realization of these rights requires sustained commitment over time. The courts should enforce the obligation of progressive realization not merely by accepting government declarations of commitment but by examining whether the measures taken are genuinely designed to progressively advance the realization of the right, whether resources are being allocated in accordance with constitutional priorities, and whether there has been any retrogression.

7.2 The Role of Civil Society in Constitutional Implementation

The experience of transformative constitutions in South Africa, Kenya, and Nepal all confirm that civil society organizations play an indispensable role in constitutional implementation. They monitor the state's compliance with constitutional obligations, document violations, bring constitutional litigation, advocate for legislative reform, mobilize affected communities to claim their rights, and participate in the democratic deliberation through which constitutional norms are developed and refined.

The Indian civil society has an extraordinary capacity for this work, much of it developed under enormous pressure and in the face of serious legal and political obstacles. The organizations working on dalit rights, adivasi land rights, worker rights, women's rights, environmental protection, right to information, and democratic accountability have, over decades, built sophisticated legal, advocacy, and mobilization capacities that would be powerful instruments of constitutional implementation in a more supportive constitutional environment.

The provisions of the draft that protect freedom of association, that guarantee funding security for civil society organizations operating in the public interest, and that prohibit the use of foreign funding regulations and other legal mechanisms to harass legitimate civil society organizations, are provisions designed precisely to preserve and strengthen this civil society capacity.

7.3 The Courts and Constitutional Implementation

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The draft constitution creates a reformed judiciary, but it also creates specific responsibilities for that judiciary in the implementation of the new constitutional order. Courts will be called upon to interpret new provisions of a kind they have not seen before, to enforce socioeconomic rights in structural orders, to adjudicate federalism disputes in a new institutional framework, and to apply a new standard of rights protection in criminal and administrative proceedings.

This challenge of judicial capacity is real and should not be underestimated. The success of the South African Constitutional Court's transformative jurisprudence rested in large part on the quality and commitment of its early bench, which included Albie Sachs, Arthur Chaskalson, Ismail Mahomed, and others who had spent careers thinking about constitutional transformation and who brought to the court both legal expertise and moral commitment to the values of the new constitution. The new Indian Supreme Court under the proposed constitutional framework will need to develop an equivalent tradition.

The legal education proposals in the draft, the democratization of the judiciary through the NJAC, and the requirements of diversity and transparency in judicial appointments are all designed to build the judicial capacity necessary for effective constitutional implementation. But they will take time to bear fruit, and in the meantime the courts will need to draw on the existing jurisprudential tradition of Indian constitutional law at its best: the progressive, rights-respecting, social-justice-oriented tradition represented by the best decisions of the Supreme Court over seven decades.

7.4 International Dimensions of Constitutional Implementation

The draft constitution's provisions on international human rights obligations, on foreign policy oversight, and on India's regional responsibilities have implementation dimensions that deserve specific attention.

The direct incorporation of India's international human rights obligations into domestic constitutional law will require significant judicial education on international human rights law, a greater engagement by Indian courts with the jurisprudence of the UN treaty bodies and of comparative human rights courts, and the development of a domestic jurisprudence that integrates international human rights standards into Indian constitutional reasoning.

The foreign policy oversight provisions will require the development of parliamentary capacity for foreign policy scrutiny, including the strengthening of the Parliamentary Committee on Foreign Affairs, the development of a tradition of parliamentary debate on major foreign policy questions, and the creation of a civil society research infrastructure for foreign policy analysis.

The provisions on South Asian regional responsibility will require a fundamental reorientation of Indian foreign policy culture, from the hegemon-and-neighbors model that has characterized much of India's post-independence foreign policy to a model of genuine cooperative partnership based on recognition of shared interests and shared vulnerabilities. This reorientation is not merely a matter of constitutional provision: it requires political will, diplomatic skill, and sustained investment in regional institutions.

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CHAPTER EIGHT: THE CONTINUING ARGUMENT

8.1 What This Draft Cannot Do

It is important to be clear about what a draft constitution, however comprehensive, cannot do. It cannot guarantee its own implementation. It cannot create the political will that its implementation requires. It cannot substitute for the democratic organizing, the civic education, the legal advocacy, and the political courage without which constitutions remain words on paper.

The history of constitutionalism is full of beautifully written constitutions that have failed in practice. The history is also full of constitutions that have succeeded, not because they were perfect texts, but because they were fought for, defended, and implemented by people who believed in what they stood for and were willing to sacrifice for it.

The Constitution of India has failed in many of the ways documented in this textbook, but it has also succeeded in ways that should be acknowledged honestly: seventy years of constitutional democracy in a country of extraordinary diversity and poverty is not nothing. The constitutional abolition of untouchability, though imperfectly implemented, has transformed the self-understanding of dalit communities and provided a legal framework for the ongoing struggle against caste oppression. The reservation system, whatever its limitations, has created a dalit and tribal middle class that did not exist in 1950. The fundamental rights chapter has been used by courts and activists to achieve genuine protections for genuine people. The parliamentary system, however dysfunctional, has produced regular elections, multiple transfers of power, and a public culture of political accountability that is not nothing in a world where many countries have known only authoritarian governance.

The argument of this textbook is not that the Constitution of India has been worthless: it is that it has been inadequate, and that the Indian people deserve better. The draft constitution is an attempt to sketch what "better" would look like. It is offered in the spirit of Ambedkar's challenge to the Constituent Assembly: that the proof of a constitution is not in its text but in the willingness of those who live under it to defend it, to improve it, and to hold their institutions to its promises.

8.2 The Urgency of the Moment

The urgency of constitutional renewal in India is not merely academic. The democratic backsliding documented in this textbook and in the international democracy monitoring literature is real, progressive, and threatening. The normalization of preventive detention, the hollowing out of institutional independence, the use of the state's coercive machinery against critics and dissenters, the majoritarian pressure on minority communities, and the systematic concentration of power in the executive are not trends that will reverse themselves without deliberate constitutional and democratic intervention.

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The comparative history of democratic backsliding is not encouraging. Once authoritarian consolidation reaches a certain threshold, democratic renewal becomes very difficult without either electoral alternation (which the authoritarian consolidation is precisely designed to prevent) or external pressure (which has its own problematic dimensions). India has not yet reached that threshold: elections remain competitive, the judiciary retains some independence, civil society retains some space, and the democratic opposition retains some capacity to contest. But the trajectory is concerning.

The window for constitutional renewal is open, but it is not unlimited. The argument of this textbook is that the intellectual, civic, and democratic resources for constitutional transformation are available, that the case for transformation is overwhelming, and that the moment demands both urgency and ambition. The people of India have waited long enough for a constitutional order that is genuinely theirs.

8.3 The Vision of Constitutional Democracy

The vision animating this draft is not complicated, though its realization requires immense complexity of institutional design. It is the vision of a constitutional democracy in which every person, regardless of their caste, religion, gender, region, language, or economic condition, enjoys real equality before the law and equal access to justice, real protection of their dignity and freedom, real participation in the democratic processes that govern their lives, real access to the social and economic conditions necessary for a life well lived, and real confidence that the state serves them rather than dominates them.

This vision is not utopian. It is the vision that the framers of the existing Constitution stated in its Preamble and failed, for structural reasons, to deliver. It is the vision that Ambedkar articulated in his greatest speeches and that his own life, in its combination of extraordinary intellectual achievement and profound personal experience of discrimination, embodies. It is the vision that every dalit who has been humiliated by the state, every adivasi whose land has been taken without compensation, every Muslim who has feared the knock on the door in the night, every journalist who has been arrested for asking the wrong question, every worker who has been told their labor rights are subordinate to economic development, every woman who has been told to sacrifice her rights for the sake of family harmony, has a right to demand from the constitutional order of the Republic.

The Constitution as it exists has failed them. The Constitution as it could be need not.

The Indian people have given the world Ambedkar's constitutional philosophy, Gandhi's transformative politics, Tagore's vision of civilizational plurality, and Nehru's imperfect but genuine commitment to democratic socialism. They have sustained, with all its flaws, one of the great democratic experiments of the twentieth century in conditions that would have defeated less resilient peoples. They have produced civil society organizations, legal advocacy networks, independent media institutions, and democratic movements that have, in the face of systematic obstruction, continued to push the constitutional order toward its own stated values.

They deserve a constitution worthy of that tradition.

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A constitution that is theirs in its origins, genuine in its commitments, robust in its institutions, and expansive in its vision of what the Indian people, in the fullness of their diversity and the depth of their democratic aspiration, can make of themselves.

The drafting of that constitution is the constitutional task of our generation.

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BOOK SUMMARY

This twenty-part textbook systematically critiques the Constitution of India, arguing that its colonial DNA, centralizing design, non-justiciable social rights, emergency powers, and weak accountability mechanisms have produced a system of executive dominance, democratic backsliding, and systematic victimization of the poor, Dalits, Adivasis, religious minorities, women, and political dissenters.

Drawing on critical legal studies, postcolonial jurisprudence, Ambedkarite social constitutionalism, Rawlsian justice, and comparative constitutional law, the work documents failures across federalism, electoral politics, criminal justice, surveillance, media freedom, corruption, and foreign policy.

It concludes that incremental amendment is insufficient and calls for a new *constituent* process, offering a draft constitution that establishes juscicible socioeconomic rights, genuine fiscal federalism, proportional representation, an independent judiciary, police decolonization, digital rights, environmental rights, and popular sovereighty.

DOI: 10.5281.zenodo.19635163